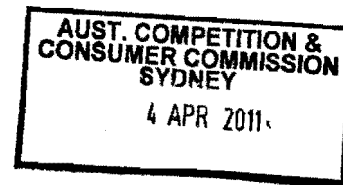


# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin



  
~~Confidential~~

Mr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition and Consumer  
Commission  
Level 20  
175 Pitt Street  
Sydney NSW 2000

4 April 2011

Our ref 219/15869/20930279

FILE No.
DOC.
MARS/PRISM.

Dear Mr Chadwick

## Exclusive dealing notification

We act for Apple Pty Limited (**Apple**).

1. A notification of exclusive dealing pursuant to section 93(1) dated 4 April 2011 is enclosed with this letter on behalf of Apple.
2. The relevant notified conduct is the requirement that Apple Premium Resellers use shopfitting services from third party vendors specified by Apple and are reimbursed by Apple for the costs of the services in question as described in paragraph 2(b) of the enclosed Form G.
3. The notified conduct is substantially the same in its effect as the notified conduct in a prior notification number N94022 dated 15 June 2009. The necessity for a slightly revised notification arises from a change in the wording of the condition on the reimbursement of fitout costs which is different from the prior condition.
4. As no Apple Premium Reseller has sought to use a shopfitter other than the one approved by Apple since this earlier notification, the new notified conduct will in practice be no different from the earlier notified conduct.
5. For the reasons given in the enclosed notification, Apple is of the view that there are no public detriments from the conduct and the conduct satisfies the test in section 93(3A)(b).
6. A public register version and a confidential version are enclosed. Confidentiality is claimed over the material which has been redacted from the confidential version of Form G owing to its commercial sensitivity. Disclosure of this material would harm Apple's commercial interests.
7. For the convenience of Commission staff review of this matter, a marked up version of the 2009 Form G document showing the changes which have been made to that version in the current Form G is also enclosed for your reference, which is not intended for the public register.

Please contact us if you have any questions regarding the enclosed notification.

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Mr Richard Chadwick, Australian Competition and Consumer Commission

4 April 2011

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Yours sincerely



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**Christopher Kane, Lawyer**  
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**Enc**

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

## Email

11 April 2011

Mr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition and Consumer Commission  
Level 20  
175 Pitt Street  
Sydney NSW 2000  
[adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Our ref 219/15255/20930279

Dear Mr Chadwick

### Exclusive dealing notification

We refer to our 4 April 2011 letter enclosing a notification of exclusive dealing on behalf of Apple Pty Limited (**Apple**) pursuant to section 93(1) and to our 8 April 2011 telephone call with Mr Ian Lawrence of the Commission regarding the claims for confidentiality made over the material which was redacted from the confidential version of Form G enclosed with our 4 April 2011 letter.

As discussed in our 8 April 2011 telephone call with Mr Lawrence, we confirm that Apple withdraws its claim for confidentiality over the material which was redacted from the confidential version of Form G enclosed with our 4 April 2011 letter.

Enclosed for the further convenience of Commission staff review of this matter, and for publication on the public register, is a full unredacted version of the Form G notification lodged by Apple on 4 April 2011.

Please contact us if you have any further queries regarding the notification.

Yours sincerely



**Bruce Lloyd, Partner**  
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**Copy Email**  
Mr Ian Lawrence  
Australian Competition and Consumer Commission  
[ian.lawrence@acc.gov.au](mailto:ian.lawrence@acc.gov.au)

**Form G**

Commonwealth of Australia  
*Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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)*

N95351 Apple Pty Limited ACN 002 510 054 (**Apple**).

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

Apple provides a range of consumer electronics products including digital media players, personal computer devices, mobile phones, software and accessories. It provides these products to authorised resellers and directly to a range of consumer, business, educational institutions and government customers through its own online and store retail channel.

Some authorised resellers, subject to meeting the eligibility criteria set by Apple, have been appointed by Apple to be Apple Premium Resellers of Apple products.

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

Mr Bruce Lloyd  
Partner  
Clayton Utz  
Level 19, 1 O'Connell Street  
Sydney NSW 2000

**2. Notified arrangement**

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

The proposed arrangement relates to:

- (a) the supply of store design and layout services by Apple to certain (non-Apple owned) Apple Premium Resellers;
- (b) the acquisition of goods and services by certain Apple Premium Resellers from approved third party vendors nominated by Apple to fitout retail stores.

Ramvek Shopfitting Australia is the only third party vendor approved by Apple in Australia as at the date of this Form G. Apple continues to evaluate other vendors of fitout services, and additional vendors that meet Apple's quality and pricing criteria may be added to Apple's list of recommended vendors communicated to Apple Premium Resellers in the future.

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

The notified conduct is as follows:

Subject to the satisfaction of certain criteria in their Apple Premium Reseller Agreement, Apple will offer to supply, and supply services (i.e. store design and layout services) to all Apple Premium Resellers to enable them to use Apple's store design recommendations and acquire recommended goods and services (i.e. fixtures and shopfitting services) from third party vendors specified by Apple.

Apple Premium Resellers will be required to acquire goods and services (i.e. fixtures and shopfitting services) from third party vendors specified by Apple, in order to comply with Apple's store design requirements. Apple will pay an allowance to the Apple Premium Reseller to defray the cost of acquiring the goods and services from the specified third party vendor up to a specified amount.

Apple will not pay an allowance to Apple Premium Resellers who do not agree to acquire recommended goods and services from third party vendors approved by Apple, being shopfitters approved by Apple to fitout stores operated by Apple Premium Resellers.

**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)

Certain actual and potential Apple Premium Resellers.

- (b) *Number of those persons:*

- (i) *At present time:*

All of the current Apple Premium Resellers listed at attachment A.

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

The total number of Apple Premium Resellers as at the date of this Form G is 13. This is not the total number of Apple Premium Reseller stores, as Apple Premium Resellers can operate more than one store.

The number of Apple Premium Resellers with whom Apple is likely to deal in the course of engaging in the conduct during the next year could fluctuate, but is not likely to exceed 20.

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

See Annexure A for the list of current Apple Premium Resellers who may be subject to the conduct described in 3(b)(ii) above.

#### **4. Public benefit claims**

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

The proposed conduct will provide the following benefits to the public:

- (a) improved customer amenity and overall store presentation resulting in an enhanced shopping experience for consumers;
- (b) consistent brand positioning and representation across Apple Premium Reseller stores;
- (c) reduced maintenance costs for Apple Premium Resellers by the use of quality, cost effective fixtures and fittings;
- (d) increased in-store design innovation will enhance competition in the broader retail market for consumer electronics products, as it will make Apple Premium Resellers more attractive to consumers of consumer electronics products more generally. This will enable Apple Premium Resellers to compete more effectively with other retailers of consumer electronics products;
- (e) enhanced competition among actual and potential retailers of Apple products for appointment as Apple Premium Resellers;
- (f) lower overall shopfitting transaction costs through the consolidated purchase of shopfitting goods and services through an approved third party vendor nominated by Apple. As Apple Premium Resellers will not be required to pay for store fitout up to a specified amount, these cost savings will be passed through to Apple Premium Resellers. This will enhance the opportunity for Apple Premium Resellers to compete more effectively in their retailing of Apple products.

The public benefits outlined above outweigh the detriment (if any) arising from the proposed conduct.

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

The provision of store design and layout service by Apple in conjunction with the use of approved third party vendors will ensure that the Apple brand is consistently represented and enhance store presentation for the overall benefit of Apple and the individual consumer that visits Apple Premium Reseller stores to purchase Apple products.

Apple has investigated the benefits and potential cost savings of the arrangement with one particular shopfitter in Australia - Ramvek Shopfitting Australia. As a result those investigations, Apple forecasts that by consolidating the purchase of shopfitting goods and services, it will be able to deliver significant cost savings to Apple Premium Resellers wishing to fitout their stores, thereby giving rise to the benefits described above.

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 market directly affected is the market(s) for the provision of shopfitting goods and services (**Shopfitting Market**).

The market indirectly affected is the market(s) for consumer electronics products including digital media players, personal computer devices, mobile phones, software and accessories (**Electronics Retail Market**).

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 proposed conduct will have no public detriment.

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

A notification under s93(1) in respect of substantially similar conduct has been in place since 2009. No detriment has resulted from that notification and no detriment will arise from the continuing notification of the conduct described in this Form G.

In respect of the Shopfitting Market, Apple Premium Resellers have as a matter of course acquired fixtures and shopfitting services from third party vendors specified by Apple in order to receive the allowance provided by Apple. Apple Premium Resellers will continue to use third party vendors specified by Apple in the same way, now that they are required to do so by Apple. The proposed arrangement will have no measurable competitive effect on the Shopfitting Market.

In respect of the Electronics Retail Market, there are numerous retailers including large retail chains, which sell consumer electronics products. These electronics

retailers compete directly with Apple Premium Resellers selling Apple branded consumer electronics products such as digital media players, personal computer devices, mobile phones, software and accessories.

The public benefits of the proposed conduct outweigh the public detriments (if any). Accordingly, Apple submits that the notification of the proposed conduct should be allowed to stand.

**7. Further information**

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

Mr Bruce Lloyd  
Partner  
Clayton Utz  
Level 19, 1 O'Connell Street  
Sydney NSW 2000

Dated..... 4 APRIL 2011 .....

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(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 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 *Competition and Consumer Act 2010* 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.

## Annexure A - List of Apple Premium Resellers

	Name	Trading Name	Address
1.	CALLNET NOMINEES PTY LTD	MAC WORX	10/7 Delage Street, Joondalup WA 6027
2.	COMPUTERS NOW PTY LTD	COMPUTERS NOW	64 Clarendon Street, South Melbourne VIC 3205
3.	FORTALEZA SERVICES PTY LTD	COMPLETE COMPUTER CENTRE WAGGA	PO Box 197, Wagga Wagga NSW 2650
4.	IMA COMPUTER CO PTY LTD	T/A PENTAGON DIGITAL	546 Whitehorse Road, Mont Albert VIC 3127
5.	MAC 1 PTY LTD	MAC 1 BURWOOD	41 Burwood Road, Burwood NSW 2134
6.	MAC CENTRE NORWOOD PTY LTD	MAC CENTRE NORWOOD	Shop 5, 177-193 The Parade, Norwood SA 5067
7.	MACCENTRIC PTY LTD	MACCENTRIC PTY LTD	Shop 502 Warringah Mall, Brookvale NSW 2100
8.	MY MAC (AUSTRALIA) PTY LTD	MY MAC (AUSTRALIA) PTY LTD	192 Flinders Street, Melbourne 3000
9.	THE TRUSTEE FOR COMPUTERS NOW UNIT TRUST	COMPUTERS NOW	64 Clarendon Street, South Melbourne VIC 3205
10.	NEXT BYTE PTY LTD AS TRUSTEE OF THE NEXT BYTE UNIT TRUST	NEXT BYTE	67 Links Ave North, Eagle Farm QLD 4009
11.	THE TRUSTEE FOR THE MABBY TRUST	DIGITAL APPEAL	1/188 The Entrance, Erina 2250
12.	THEDOC REPAIR PTY LTD	THEMAC SHOP	99 George Street, Launceston TAS 7250
13.	TRAVERSE IT PTY LTD	BEYOND THE BOX	1 Puckle Street, Moonee Ponds VIC 3039