

FILE No:

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www.bakermckenzie.com**Asia Pacific**Bangkok
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* Associated Firm

16 October 2012

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Chadwick,

Exclusive Dealing Notification – MasterCard Asia/Pacific (Australia) Pty Ltd

We act for MasterCard Asia/Pacific (Australia) Pty Ltd.

We enclose an exclusive dealing notification by MasterCard Asia/Pacific (Australia) Pty Ltd pursuant to section 93(1) of the *Competition and Consumer Act 2010 (Cth) (Act)*. 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.

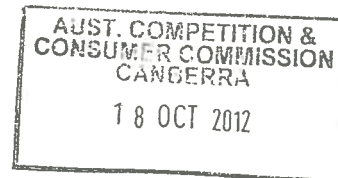
We also enclose a cheque made payable to the Commission in the sum of \$100, being the prescribed lodgment fee.

Yours sincerely,



Anne-Marie Allgrove
Partner
+61 2 8922 5274
anne-marie.allgrove@bakermckenzie.com

Encl



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:

N96211 MasterCard Asia/Pacific (Australia) Pty Ltd (ABN 95 108 603 345)
(MasterCard)

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

MasterCard operates a global payment system.

(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 5247
Facsimile: (02) 9225 1595
Attention: Anne-Marie Allgrove

2. Notified arrangement

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

Supply of payment system services in relation to credit cards.

(b) Description of the conduct or proposed conduct:

Offer to supply a prize, as part of a trade promotion, of flights, accommodation, hospitality and spending money to persons who have acquired a MasterCard credit card from Westpac Banking Corporation.

The proposed offer of a prize may constitute third line forcing pursuant to sections 47(6) and 47(7) of the TPA, as it might be argued that MasterCard is offering to supply products and/or services on condition that the customer acquires a credit card from a third party issuer.

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:
- Persons who are or who may become holders of Westpac MasterCard credit cards issued in Australia.
- (b) Number of those persons:
- (i) At present time:
- Approximately 800,000.
- (ii) Estimated within the next year:
- Approximately 500,000.
- (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:
- The conduct described in 2(b) will be of public benefit because:
- the conduct will improve the quality of the service offered by MasterCard to its customers; and
 - the conduct will promote competition in the relevant markets by exerting pressure on competitors to offer similar and other value added services.
- (b) Facts and evidence relied upon in support of these claims:
- Attached are the conditions of entry for the proposed promotion, which outline the benefits to be offered to Westpac MasterCard credit cardholders at no additional cost to the cardholders.
 - There are a great many alternative suppliers of credit card and consumer banking services.

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):

Credit card and consumer banking markets.

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:

MasterCard does not consider that the proposed conduct will result in or is likely to result in any public detriment as:

- consumers are under no obligation to acquire services from MasterCard or from Westpac; and
- consumers may obtain services from Westpac without acquiring a MasterCard credit card, and may obtain a MasterCard credit card from a number of issuers other than Westpac.

(b) Facts and evidence relevant to these detriments:

MasterCard considers the benefits to consumers of having the opportunity to participate in the promotion outweighs any possible public detriment.

7. Further information

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

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

Telephone: (02) 8922 5247
Facsimile: (02) 9225 1595
Attention: Anne-Marie Allgrove

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.

MasterCard Asia/Pacific (Australia) Pty Ltd

Westpac Priceless Sydney Phase 2 Registration Promotion

AUSTRALIA

Conditions of Entry

1. Information on how to enter and prize details set out in all communications regarding the MasterCard Westpac Priceless Sydney Phase 2 Registration Promotion ("Promotion") form part of the Conditions of Entry. By participating in the Promotion, each entrant fully and unconditionally agrees and acknowledges that these Conditions of Entry and the decisions of the Promoter on all matters relating to the Promotion are final and binding. Entrants must be individual MasterCard cardholders who are eligible to participate in the Promotion as set out at condition 4.
2. The "Promoter" is MasterCard Asia/Pacific (Australia) Pty Ltd (ABN 95 108 603 345), L8 100 Arthur Street, North Sydney, NSW 2060, Australia.
3. The "Promotional Period" for this Promotion commences 1 November 2012 at 00.01 (local time in NSW) and concludes on 7 December 2012 at 23:59 (local time in NSW).
4. Subject to condition 5, entry into the Promotion is open to a MasterCard cardholder who satisfies the following eligibility requirements:
 - a) Who is a resident of Australia and is over the age of 18 years and who for the Promotional Period and up to and including the date on which the prize is finally awarded holds a valid Westpac-branded MasterCard credit card (being a standard, gold, platinum, world or co-brand MasterCard card issued in Australia and who is the person liable to make payments under the relevant MasterCard account (i.e. primary cardholder) or who is an additional cardholder (a "Cardholder");
 - b) Who registers his or her contact details and MasterCard card details in accordance with condition 7; and
 - c) Who is available to travel to and/or attend the events specified in condition 9 on the dates nominated by the Promoter.
5. Employees of the Promoter or the Promoter's associated agencies or companies directly involved in the Promotion (as determined by the Promoter) and their immediate family members are ineligible to participate.
6. Cardholders irrevocably consent and authorize the Promoter to contact their issuing bank, and their issuing bank to confirm to the Promoter, that the Cardholder is a valid MasterCard Cardholder.
7. To enter, Cardholders must register online at www.pricelesssydney.com.au/westpac during the Promotional Period. Cardholders will be required to register their own details including but not limited to the first 6 digits of their MasterCard card number, their own full name and email address. Only one registration per Cardholder will be accepted. It is each entrant's responsibility to ensure that any details they provide during the registration process are accurate.
8. The cost of accessing the promotional website will be dependant on the Cardholder's individual Internet Service Provider. Registrations must be comprehensible and, where relevant, audible in order to be valid. Inaudible and incomprehensible entries (as determined by the Promoter) will not be valid entries.

9. There is one (1) major prize to be won:

- Return economy class flights for two (2) adults from Perth, Hobart, Brisbane, Melbourne, Adelaide, Canberra, Cairns, or Darwin to Sydney
- Return private limo airport transfers for two (2) adults to and from Sydney airport
- Five (5) night's accommodation at the 5 star Intercontinental Sydney in a Club Harbour View room including breakfast, light refreshments, afternoon tea, twilight drinks and canapés on a twin/double share basis
- 2-hour Spa Package for two (2) adults at the Intercontinental Hotel
- Dinner at Café Opera at the Intercontinental Hotel for two (2)
- 5-hour city tour for two (2) in luxury vehicle with professional driver/guide
- 3-course lunch at 360 revolving restaurant for two (2)
- Two (2) adults can either climb the iconic Sydney Harbour Bridge or enjoy a VIP experience at Wildlife World
- Degustation dinner at the highly awarded 3-hat Quay Restaurant for two (2)
- A night out at the theatre with premium tickets for two (2) (performance to be determined by the Promoter)
- Scenic 90 minute heli flight over Sydney Harbour and the Blue Mountains for two (2) adults
- \$3,000 spending money to be debited to the winner's everyday account

The total prize value for the major prize is AU\$12,218.18.

10. Dates of travel are subject to availability. Dates must be booked within 30 days of winner being notified. Travel must be completed by 30 June 2013. Blackout dates are 23 December 2012 to 4 January 2013 and 29 March 2013 to 1 April 2013. Accommodation is on a twin/double share basis. The winner and his or her guest must travel at the same time, from the same city and are responsible for transport from their residence/s to the selected airport for flight departure (Perth, Hobart, Brisbane, Melbourne, Adelaide, Canberra, Cairns, or Darwin). It is the winner's and his or her guest's responsibility to ensure they have valid documentation which meets the requirements of providers/ authorities at every destination. Prize is non-transferable and cannot be exchanged for cash. Travel Insurance is highly recommended and is the responsibility of the winner.
11. The prizes do not include spending money, passports, visas, travel insurance, transfers, meals, accommodation, or other related expenses, taxes or other ancillary costs other than as detailed in conditions 9. The prize will be drawn at 14.00 (local time in NSW) on 14 December 2012 at Dload Pty Ltd, 24/177 Pacific Hwy, North Sydney, NSW 2060, and will be awarded in a form to be determined by the Promoter. The first entry drawn will win the major prize.
12. The prize-winner will be notified by email by the Promoter using the contact details provided to the Promoter by the Cardholder during the registration process and advised

that their entry has been drawn. The prize winner's name will be displayed on www.pricelessydney.com.au/westpac and will be available in writing upon written request to MasterCard Asia/Pacific (Australia) Pty Ltd, Level 8, 100 Arthur Street, North Sydney NSW 2060 Australia. The details of the winner/s of the prizes drawn in this Promotion will be published in the public notices section of *The Australian* on 21 December 2012.

13. Should the major prizes remain unclaimed by a winner, or if the draw has been conducted and the initial winner cannot attend the events described in condition 9 as required by condition 4(c), an unclaimed prize draw will take place at 14.00 (local time in NSW) on 21 March 2013 at Dload Pty Ltd, 24/177 Pacific Hwy, North Sydney, NSW 2060, subject to applicable laws and regulations. Any winners will be notified by email and any winners of prizes valued over \$100 will be published in the public notices section of *The Australian* newspaper on 27 March 2013.
14. No prize is either redeemable for cash or transferable. Each prize-winner will accept the prize 'as is' and acknowledges that the Promoter accepts no responsibility for any variation in the value of the prize. There will be no compensation in the event that prizewinners are unable to use all or part of the prize.
15. All valid claims for a prize and entitlements will be met unless they involve fraud or ineligibility. The Promoter reserves the right, and by their entry into the Promotion each entrant consents to the Promoter exercising this right, to validate and check the authenticity of entries and prize claims, with the relevant Cardholder's issuing bank.
16. The Promoter does not assume any responsibility for any products and services offered as prizes under, or purchased to participate in, the Promotion. The products are sold and services are provided solely by the relevant vendors, under such terms and conditions as determined by such vendors, and the Promoter accepts no liability whatsoever in connection with such products and services. The products and services have not been certified by the Promoter and under no circumstances shall the inclusion of any product or service in the Promotion be construed as an endorsement or recommendation of such product or service by the Promoter.
17. A winner has rights under the Australian Consumer Law and other similar legislation which cannot be excluded, restricted or modified by the Promoter. These rights include a statutory guarantee that any services provided by the Promoter will be rendered with due care and skill and that any goods will be of acceptable quality. These Conditions of Entry do not exclude, restrict or modify those statutory rights in any way. However, to the extent that it is permitted by law to do so, the Promoter makes no representations or warranties, express or implied, under laws, other than the Australian Consumer Law, regarding the quality or suitability of the prize awarded under these Conditions of Entry and will not be responsible for breach of any such implied terms.
18. The Promoter and its members, financial institutions, associated agencies and companies and their respective directors, officers, employees and agents, shall not be liable for any loss or damage, including for any personal injury suffered or sustained in connection with the entrant's participation in the Promotion or the receipt or use of any part of any prize or, if the prize(s) includes travel, suffered during the course of the prize winning travel, except for any loss or damage which is due to the negligence or wilful misconduct of the Promoter or which otherwise cannot be excluded by law.
19. Before the prize is awarded, the winner and, if applicable, his or her guest may be required to sign an agreement to release the Promoter from, and indemnify the Promoter against, any loss, damage or injury arising from the use or participation in the prize, except to the extent any loss, damage or injury is due to the negligence or wilful misconduct of the Promoter or otherwise cannot be excluded by law as referred to in condition 17 above.

20. The Promoter reserves the right to refuse to allow a winner or, if applicable, his or her guest, to take part in any or all aspects of a prize, if the Promoter determines that a winner or his or her guest is not in the mental or physical condition necessary to be able to safely participate in the prize.
21. To the extent permitted by law, the Promoter and its members, financial institutions, associated agencies and companies and their respective directors, officers, employees and agents will not be responsible in any way whatsoever in respect of the following: (1) any amount spent on or charged to an entrant's account in the course of entering the Promotion or for correctness of the details of the purchases and transactions made; (2) technical failures of any kind including but not limited to any error, omission, interruption, deletion, defect, delay in operation or transmission, communications, line failure or the malfunctioning failure or unavailability of any computer, server, cable, line, network, hardware, software, internet service or web site; (3) unauthorised human intervention in any part of the entry process of the Promotion, including but not limited to theft, destruction or unauthorised access to, or alteration of the Promotion; (4) electronic or human error which may occur in the administration of the Promotion or the processing of entries; or (5) any entry that is late, lost, stolen, damaged or misdirected or otherwise not received.
22. The Promoter, in its sole discretion but subject to applicable laws and regulations, reserves the right to cancel, suspend, terminate or modify the Promotion if fraud, technical failures or any other factor beyond the Promoter's reasonable control adversely affects the Promoter's ability to conduct the Promotion as contemplated in these Conditions of Entry. In such event, the Promoter reserves the right to award the prize at random from among the eligible entries received up to the time of the cancellation or modification. The Promoter also reserves the right, in its sole discretion, to disqualify any individual it finds to be tampering with the entry process or the operation of the Promotion or to be acting in breach of these Conditions of Entry or in breach of any law or to be acting in an unsportsmanlike, non-genuine or disruptive manner. Any attempt by any person to deliberately cause damage or undermine the operation of the Promotion may be a violation of criminal and civil law and, should such an attempt be made, the Promoter reserves the right to seek damages from any such person, to the fullest extent permitted by law, in addition to disqualifying such person.
23. The Promoter will use its best endeavours to provide the prizes listed. If any of the prizes are unavailable for whatever reason, the Promoter reserves the right to substitute that prize or item for a prize or item of an equivalent value.
24. The Promoter's or an entrant's failure to enforce any term of these Conditions of Entry will not restrict the relevant party from enforcing that or any other provision at a later time.
25. The Promoter accepts no responsibility for any tax implications that may arise from the prize winnings or the use of the prize winnings. It is the responsibility of each entrant to seek independent advice on the possible implications this may have on their own financial situation.
26. Records of all entries become and remain the sole property of the Promoter. If an entrant opts-in to receiving further communications from the Promoter and/or its affiliates, the entrant's details, which may include name, address, email address and mobile phone number will be entered into a database and the Promoter and/or its affiliates may use those details to send future marketing materials to the entrant. Except where prohibited by law, participation in the Promotion constitutes the entrant's consent to the storage, use and disclosure of the entrant's entry details as set out in these Conditions of Entry and also constitutes entrant's agreement that Promoter may use overseas facilities to process, store or back up its information. As a result, the Promoter may transfer the entrant's personal information to its overseas facilities for storage.

However, this does not change any of the Promoter's commitments to safeguard the entrant's privacy.

27. Except where prohibited by law, participation in the Promotion constitutes a prize-winner's consent to the Promoter's use of the prize-winner's name, likeness, opinions and address for (1) any future promotional, marketing and publicity purposes in any media worldwide, without further payment or consideration or notice; and (2) any disclosure of such information by the Promoter required by law, and it is a condition of entry that in order to claim the prize, prize-winners must agree to execute any necessary consents and releases to effect the foregoing.

Information collected pursuant to the Promotion from entrants is subject to the privacy policies of the Promoter, which can be found at www.mastercard.com.au and will be handled in accordance with all applicable privacy laws in Australia.

28. Entrants may access and request correction of their personal information held by MasterCard by contacting:

MasterCard Asia/Pacific (Australia) Pty Ltd
Level 8, 100 Arthur St
North Sydney NSW 2060
Australia

29. Any cancellation or modification to the Promotion will be notified on the Promoter's website: www.pricelesssydney.com.au/westpac
30. A copy of these Conditions of Entry and prize details can be obtained by visiting www.pricelesssydney.com.au/westpac
31. If all or any part of any term or condition contained in these Conditions of Entry is declared or becomes unenforceable, invalid or illegal for any reason, that term or provision (or part of that term or provision) will be deemed severed from these Conditions of Entry to the extent of the unenforceability, invalidity or illegality and the other terms and conditions will remain in full force and effect as if the offending term or provision (or part of that term or provision) had not been included in these Conditions of Entry.
32. These Conditions of Entry will be governed by the laws of the respective state or territory of Australia where the entrant resides and each entrant agrees to submit to the non-exclusive jurisdiction of the courts of the relevant state or territory of Australia.
33. Authorised under NSW Permit No: LTPS, VIC Permit No:, ACT Permit No: TP, SA Permit No: