



Form G

Commonwealth of Australia

Competition and Consumer Act 2010 (Cth) — 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.

1. Applicant

(a) Name of person giving notice:

N96218 Universal Music Australia Pty Ltd ('UMA').

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

UMA operates Getmusic, an online music service that supplies digital recorded music to Australian consumers using the Getmusic online platform.

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

3 Munn Reserve, Millers Point, NSW 2000, Sydney, Australia

2. Notified arrangement

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

Recorded music within Australia in relation to which a discount, allowance, credit or rebate is offered to consumers who qualify under published eligibility criteria.

(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 who acquire or seek to acquire recorded music from Getmusic subject to a discount, allowance, credit or rebate for which they are eligible under published eligibility criteria.

FILE No:
DOC:
MARS/PRISM:

(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:

Karen Don

General Manager, Legal and Business Affairs

Universal Music Australia

3 Munn Reserve, Millers Point, NSW 2000, Sydney, Australia

Direct: + 61 2 9207 0519 || Fax: + 61 2 9241 1497

Dated. 25 September 2012

A handwritten signature in black ink, consisting of a stylized 'U' followed by a long horizontal stroke.

Signed by/on behalf of the applicant

Universal Music Australia Pty Ltd

(Organisation)

General Manager, Legal and Business Affairs

(Position in Organisation)



Attachment A

Description of the proposed conduct

UMA operates Getmusic, an online store that supplies a wide variety of digital recorded music to Australian consumers.

UMA proposes to make specific promotional offers from time to time in conjunction with certain third parties ('qualifying organisations'). The offers are to provide a specific discount, allowance, rebate or credit (eg a reduced price) to customers who satisfy certain eligibility criteria that are published in advance on Getmusic's website (<http://www.getmusic.com.au>).

The form of the discount, allowance, rebate or credit includes:

- prizes or rewards;
- eligibility to enter a competition for a prize;
- a reduction in price;
- an additional free good or service;
- a credit voucher;
- access to an exclusive pre-sale product; or
- access to an exclusive product.

The eligibility criteria governing the grant of a discount, allowance, rebate or credit include:

- the purchase of a product from, and the use of the website of, a qualifying organisation;
- payment for a transaction with Getmusic by means of payment facilities provided by Amex, Visa, Mastercard, PayPal or other qualifying organisations;
- the pre-order or purchase of a specific product from a qualifying organisation; or
- attendance at an event run by a qualifying organisation and providing a ticket number or other evidence to confirm attendance at that event.

It is possible that these arrangements may technically fall within sections 47(6) and/or 47(7) of the *Competition and Consumer Act 2010* (Cth), on the basis that UMA will be in the position of offering a music service, or a discount, allowance, credit, or rebate, on the condition that customers acquire or have acquired services from a qualifying organisation that is a third party. (The qualifying organisations are not related bodies corporate of UMA).

Public benefits

The discounts, allowance, credits and rebates proposed will promote consumer welfare by giving consumers more choice and by providing incentives that, if taken up, will lower the cost of consumer acquisition of the music service that is the subject to the promotions to which this notification relates.

Consumer incentives of the kind proposed are common in the relevant market and are a feature of the strong and increasing competitive tension that exists between online music retailers in Australia, including that between Getmusic and Apple iTunes (which has a dominant position in the market).

The market/s and market impact

The relevant market is the Australian market for recorded music.

UMA's Getmusic store has strong competition from online retailers in relation to all the music products that it offers. The online retailers against which Getmusic competes in the digital download retail sector of the Australian recorded music market are:

- Apple iTunes
- Telstra
- JB Hi-Fi
- Ticketek
- Leading Edge Music
- NRMA
- Pure Profile
- Southern Cross Media
- Dew Process
- Australia Post
- Ticketmaster
- Nokia
- Bandit.FM
- Guvera
- The In Song
- VIDZONE
- FISHPOND
- OPTUS
- MIA
- DADA
- MOTOROLA.

There is no barrier to any competitor in any market offering competing promotional incentives if they wish to do so.

No public detriment

UMA submits that there would be no public detriment as a result of the proposed promotional arrangements.

There is no foreclosure of conduct by competitors or potential competitors in any market. Existing or potential competitors of UMA or Getmusic are entirely free to implement competing promotions if they so choose. The proposed conduct is likely to foster further competition by UMA's and Getmusic's competitors.

The promotions, including the eligibility criteria, will be advertised and marketed clearly and accurately and fully in accordance with the Australian Consumer Law.