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Mr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition & Consumer  
Commission  
richard.chadwick@acc.gov.au



10 April 2012

By email

Dear Richard

Confidential

**Notification lodged under section 93 of the *Competition and Consumer Act 2010* for Loyalty Pacific Pty Ltd**

We act for Loyalty Pacific Pty Ltd (**Loyalty Pacific**).

We enclose a notification in respect of conduct which may raise issues under the third line forcing provisions of the *Competition and Consumer Act 2010* (Cth).

This includes:

- 1 a completed Form G in respect of the notification; and
- 2 a cheque for \$100, being the relevant fee for lodgement of Loyalty Pacific's third line forcing notification.

The notification relates to the FlyBuys loyalty program operated by Loyalty Pacific.

We note that Loyalty Pacific and other relevant parties have previously lodged third line forcing notifications in respect of conduct relating to the FlyBuys program on several occasions, including most recently in January 2012.

Please contact us if you require further information or would like to discuss this notification.

Yours sincerely

**Peter McDonald**  
Partner  
Freehills

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Freehills

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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)

N95793

Loyalty Pacific Pty Ltd (**Loyalty Pacific**)

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

Loyalty Pacific is the operator of the FlyBuys loyalty program.

The FlyBuys loyalty program is a customer loyalty program under which members of the program receive points for acquiring goods or services from participating retailers.

Members can redeem FlyBuys points for a wide variety of FlyBuys rewards, including accommodation, tickets to shows, meals at restaurants, shopping vouchers and many other goods or services.

The current third party participating retailers are:

- Stella Travel Services (Australia) Pty Limited (trading as Jetset Travel and Travelworld respectively);
- Budget Rent a Car Australia Pty Ltd; and
- the Best Western hotel group.

Loyalty Pacific notes that the participating retailers will change from time to time and, in particular, new participating retailers are likely to join program in the future as it is developed and expanded.

The FlyBuys rewards available to members from time to time are publicly available at [www.flybuys.com.au](http://www.flybuys.com.au)

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

c/o Peter McDonald  
Partner  
Freehills  
Level 43  
101 Collins Street  
Melbourne VIC 3000

**2. Notified arrangement**

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

This notice concerns:

1. Loyalty program services and benefits supplied by Loyalty Pacific to FlyBuys members, including:
  - awarding loyalty points to members related to eligible transactions;
  - issuing periodic loyalty points statements to members;
  - facilitating redemption of loyalty points, which can be used to acquire rewards (particular retail goods and services);
  - facilitating the supply of rewards to members.
2. Goods and services offered by retailers that participate in the FlyBuys loyalty program. These include a wide range of goods and services commonly used by household consumers.

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

The conduct involves Loyalty Pacific supplying, or offering to supply, loyalty program services and benefits (including those described at 2(a)(1) above), to members of the FlyBuys loyalty program on the condition that they acquire qualifying goods or services from retailers participating in the FlyBuys program, including retailers that are not currently but may become participating retailers in the future.

*(Refer to direction 4)*

**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)*

Persons who are currently, or may become, members of the FlyBuys program.

- (b) Number of those persons:

- (i) At present time:

Significantly more than 50

- (ii) Estimated within the next year:

*(Refer to direction 6)*

Estimated to be significantly more than 50 within the next year.

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

N/A

**4. Public benefit claims**

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

The notified conduct is likely to result in:

- benefits to consumers of the opportunity to earn rewards by participating in the FlyBuys program and acquiring qualifying goods and services from participating retailers; and
- increased competition (and effectively lower prices) in the markets in which participating retailers operate, arising from the additional benefits to consumers of loyalty program participation.

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

Consumers that elect to participate in the FlyBuys program have the opportunity to earn loyalty points and to use those points to obtain valuable rewards.

Consumers can join the FlyBuys program free of charge and there are no ongoing fees or any other costs.

## 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)

Loyalty Pacific has not attempted to precisely define the markets involved. However the potentially relevant markets are those for:

- the provision of loyalty program benefits to retail consumers;
- the markets in which current and future participating FlyBuys retailers supply goods and services to retail customers in Australia.

## 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)

No detriment is likely to arise from the conduct.

(b) Facts and evidence relevant to these detriments:

Consumers are under no obligation to join the FlyBuys program nor make use of the associated benefits and privileges.

There are no fees or other costs to consumers associated with joining the FlyBuys program or being a member.

## 7. Further information

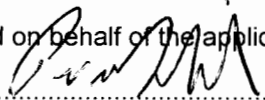
(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

c/o Peter McDonald  
Partner  
Freehills  
Level 43  
101 Collins Street

Melbourne VIC 3000

Dated..... 10 April 2012

Signed on behalf of the applicants

  
.....  
(Signature)

Peter McDonald  
Freehills  
Partner

## 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.