

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* (Cth), 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:

N96768 Bendigo and Adelaide Bank Limited ACN 068 049 178.

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

Bendigo and Adelaide Bank Limited (**the Bank**) is an Australian financial institution which holds a banking licence under the *Banking Act 1959* (Cth).

The Bank provides a range of banking and financial services including retail banking, mortgage distribution, business lending, margin lending, business banking and commercial finance, funds management, superannuation, treasury and foreign exchange services.

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

Ben Hamilton
Partner, Hall & Wilcox Lawyers
Level 30, 600 Bourke Street
Melbourne, Victoria, 3000

2. Notified arrangement

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

The Bank has developed a non-cash payment system currently known as the 'redy' payment system (**redy System**). The redy System, amongst other things, facilitates payments by consumers for the purchase of goods or services from participating merchants using a mobile device and software.

This notice relates to the services provided by the Bank in respect of a payment system, in particular:

- (i) payment services provided by the Bank to consumers who are users of the redy System; and
- (ii) reward/loyalty program services provided by the Bank to consumers who are users of the redy System.

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

The Bank proposes to:

- (i) supply services and/or benefits to redy Consumers (being access to and use of the redy System) on condition the redy Consumers deal with merchants authorised by the Bank (ie the Authorised Merchants);
- (ii) supply benefits to redy Consumers (being the Reward Credits earned by redy Consumers under the rewards/loyalty program facilitated by the Bank as part of the redy System). redy Consumers can only earn rewards in respect of purchases from merchants authorised by the Bank (ie the Authorised Merchants); and
- (iii) supply benefits to redy Consumers (being the cash rewards payable to redy Consumers participating in the redy Trial) on condition the redy Consumers deal with merchants authorised by the Bank (ie the Authorised Merchants who are participating in the redy Trial).

Further details of the redy System (and defined terms) are set out in the annexure.

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:

Consumers who use or wish to use the redy App and redy System to purchase goods or services.

The notified conduct may also affect the Authorised Merchants.

- (b) Number of those persons:

- (i) At present time:

None.

- (ii) Estimated within the next year:

During the redy Trial the Bank estimates that there will be 200 redy Consumers and 10 merchants.

If the redy System is released to the general public following the redy Trial, the Bank estimates that the number of redy Consumers will not exceed 10,000 and the number of Authorised Merchants will not exceed 300 in the next 12 months.

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

4. Public benefit claims

- (a) Arguments in support of notification:

- (i) *Innovation*

The notified arrangement involves the Bank trialling and (subject to the results of the redy Trial) releasing an innovative payment system which will provide the public with a convenient and efficient way to purchase goods and services and donate the value of rewards earned to charities or local community groups, or use the rewards to make purchases from local merchants, thus supporting local economies.

(ii) *Additional choice*

The notified arrangement involves the Bank trialling and (subject to the results of the redy Trial) releasing a new electronic payment system. This will provide the public with an alternative to existing payment systems and, therefore, additional choice.

The notified arrangement will also provide merchants with an additional payment system merchants can make available to their customers, if they wish.

(iii) *Competition enhancing*

The redy System will compete with a number of other payment systems such as eftpos payment facilities, other bank merchant facilities, credit and debit cards, direct deposit, ATM's and online payment services (such as PayPal) and a range of mobile phone payment services offered by Apple and Google amongst others.

As a result, if the redy System has any impact on competition, the redy System is likely to facilitate increased competition in respect of payment systems and encourage increased innovation and efficiency in respect of competing payment systems.

(iv) *Security*

The notified conduct assists the Bank in managing the security and integrity of the redy System.

This is because engaging in the notified conduct (ie authorising the Authorised Merchants) assists the Bank in ensuring that the merchants whose goods and services can be purchased using the redy System meet the Bank's criteria, have entered into an agreement with the Bank regarding the use of the redy System, have been provided with the necessary hardware and software by the Bank and are subject to the rules established by the Bank regarding the redy System (as well as applicable laws).

If the Bank did not authorise the Authorised Merchants it would not be able to exercise this control.

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

Not applicable

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):

The markets in which the services the subject of the notified arrangement are supplied or acquired are the markets for:

- (i) payment system services, in particular providing services to consumers in relation to facilitating transactions between consumers and merchants via a payment system (including access to and use of an electronic payment system) (**Consumer payment market**);

- (ii) providing reward/loyalty programs associated with a payment system (**Rewards market**); and
- (iii) providing services to merchants in relation to facilitating transactions between consumers and merchants via a payment system (including access to and use of an electronic payment system) (**Merchant payment market**).

The Consumer payment market is highly competitive. In particular:

- (iv) Australian banks (such as ANZ, Commonwealth Bank, NAB, Westpac) as well as numerous other Australian banks and financial institutions all provide services to consumers to facilitate transactions between consumers and merchants via a payment system, including Eftpos services, issuing credit and debit cards and direct deposit services;
- (v) payment system providers such as VISA, Mastercard and American Express provide services to consumers to facilitate transactions with merchants, such as issuing credit and debit cards and operating payment systems;
- (vi) online payment providers such as PayPal, Google Wallet and Square provide services to consumers to facilitate transactions with merchants, including operating online payment systems; and
- (vii) electronic payment systems also compete with other forms of payment such as cash.

The Rewards market is also highly competitive. In particular:

- (viii) most (if not all) Australian banks and other financial institutions offer a reward/loyalty program associated with their credit or debit card products;
- (ix) payment system providers such as Mastercard, American Express and PayPal also offer rewards/loyalty programs associated with the use of their payment systems; and
- (x) many of the rewards/loyalty programs offered by banks and other providers are linked to or associated with the popular rewards/loyalty programs of major retailers or airlines, such as the Woolworths rewards program or Qantas frequent flyer program.

The Merchant payment market is also highly competitive. Each of the providers described in paragraphs 5 (iv), (v) and (vi) also provide services to merchants to facilitate transactions between consumers and merchants via a payment system.

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:

The Bank does not believe that the notified arrangement will result in any public detriment or have any adverse effects on competition in the markets

described in Paragraph 5 above for, amongst other things, the following reasons:

- (i) consumers will not be compelled to deal with the Bank in order to acquire goods or services from Authorised Merchants. Consumers who do not wish to use the redy System to acquire goods or services from an Authorised Merchant will be able to acquire those goods or services using any other payment method accepted by the merchant (such as cash, credit or debit card or direct deposit);
- (ii) merchants will not be compelled to deal with the Bank in order to process transactions with consumers. Merchants who do not wish to use the redy System will still be able to complete transactions with redy Consumers by using one of the numerous alternative payment systems available (such as cash, eftpos or direct debit);
- (iii) each of the relevant markets described in Paragraph 5 are highly competitive and feature numerous significant market participants other than the Bank; and
- (iv) the Bank does not have or expect to acquire a significant market share or market power in respect of any of the markets described in Paragraph 5 above. The Bank estimates that its current share of the Consumer payment market is less than 2% and its current share of the Reward market is less than 1%.

(b) Facts and evidence relevant to these detriments:

Not Applicable

7. Further information

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

Ben Hamilton
Partner, Hall & Wilcox Lawyers
Level 30, 600 Bourke Street
MELBOURNE, VIC, 3000
Phone (03) 9603 3546

Dated.....30/5/13.....

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(Position in Organisation)

Ben Hamilton
600 Bourke Street,
Melbourne, Victoria, 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

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* (Cth) 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.