

# 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)*

N97840

**TopBuy Australia Pty Limited T/A [www.topbuy.com.au](http://www.topbuy.com.au)  
ABN 68 169 008 191**

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

TopBuy Australia Pty Limited is an Australian online retail company selling a wide variety of consumer products to Australian consumers

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

TopBuy Australia Pty Limited  
Attn: Compliance Manager  
5 Inglis Road  
Ingleburn NSW 2565

## 2. Notified arrangement

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

The notifier will facilitate the provision of discounted products to holders of Visa, Mastercard, American Express, Bpay, PayPal and V.me accounts

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

TopBuy Australia Pty Limited is an online retailer of a wide range of consumer goods within Australia. Customers pay for goods using their choice of the following accepted payment methods: Visa, Mastercard,

(providing these credit cards are issued by banks within Australia), American Express, Bpay, PayPal and V.me.

TopBuy proposes to make specific promotional offers from time to time to its customers in relation to products sold on its online platform. These offers will be made to customers who pay for the products using an accepted payment method specified at the time of the relevant promotion.

The initial proposal is that TopBuy will offer a promotion for discounted goods and/or shipping for customers who pay using V.me but other accepted payment service providers (noted above), may be specified from time to time in future promotions.

It is possible that these arrangements may technically fall within sections 47(6) and 47(7) of *the Australian Competition and Consumer Act 2010* (Cth) wherein TopBuy is offering to supply products with certain promotional incentives from time to time, on the condition that the customer pay for the products using an accepted payment service provider specified at the time of the relevant promotion and where none of the accepted service providers are related bodies corporate of TopBuy.

The notifier decided it was necessary to notify the conduct under Section 93(1) of the CCA.

- 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)*
- Consumers – who purchase products from the Notifiers online site.
- (b) **Number of those persons:**
- (i) **At present time:**  
Substantially more than 50
- (ii) **Estimated within the next year:**  
*(Refer to direction 6)*  
Substantially more than 50
- I 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)*

Under the TopBuy proposed promotional arrangements there would be no obligation on customers to pay for products using the accepted payment service provider specified by TopBuy at the time of the promotion.

However, those customers who choose to take advantage of the proposed arrangement will enjoy various promotional benefits offered by TopBuy from time to time, such as pricing and shipping discounts, rebates or coupons for other products offered by TopBuy.

TopBuy also believes that its proposed promotional arrangements may encourage its competitors to offer similar promotions for the benefit of their customers.

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

Refer to 4 (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):**  
*(Refer to direction 8)*

The online retail of consumer products and services within Australia.

The proposed arrangements are pro-competitive because they are intended to and will in fact offer consumers financial or other material benefits.

TopBuy faces strong competition from similar online providers of consumer goods. There is no prospect of the proposed conduct substantially lessening competition in any market, in any way.

#### 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)*

TopBuy submits that there would be no public detriment as a result of the proposed promotional arrangements to be implemented from time to time.

There is no foreclosure of conduct by competitors or potential competitors in any market. Existing or potential competitors are entirely free to implement similar promotions with any payment service provider for the

benefit of their customers. The proposed conduct is likely to stimulate and promote healthy competition by TopBuy's competitors.

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

- i. There is no obligation for consumers to acquire goods or services from TopBuy and use a specified payment provider during the promotional periods.
- ii. Consumers are free to transact normally on the TopBuy site using any of the accepted payment providers.
- iii. Consumers are able to transact with any of the payment providers without any obligation to acquire goods from TopBuy.
- iv. The proposed conduct will provide a benefit to those consumers who choose to take advantage of the offer during a promotional period.
- v. The proposed conduct will not in any way lessen competition but is likely to stimulate healthy competition in the online retail market.

**7. Further information**

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

Dated: 23<sup>rd</sup> September 2014

Signed by/on behalf of the applicant

.....  
(Signature)

JOHDI FARRELL  
(Full Name)

TOPBUY AUSTRALIA PTY LIMITED  
(Organisation)

GENERAL MANAGER - COMPLIANCE  
(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 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.