



8 December 2014

**BY EMAIL: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)**

General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
MELBOURNE VIC 3000

Dear Sir/Madam

**Potential Third Line Forcing Conduct – Form G Notification**

We enclose a Form G Exclusive Dealing Notification in relation to potential third line forcing conduct by Victorian Arts Centre Trust t/as Arts Centre Melbourne (**Applicant**) under the *Competition and Consumer Act 2010* (Cth). The Herald and Weekly Times Pty Ltd (**HWT**) has received written authorisation to lodge this Notification on behalf of the Applicant. A copy of that authorisation is also enclosed. We do not oppose the document being placed on the public register.

The Applicant submits that the Proposed Conduct will not result in any public detriment at all. Further, to the extent that public detriment may be taken to arise, the Applicant submits that the public benefits arising from the Proposed Conduct far outweigh any detriments that may arise.

Please do not hesitate to contact the writer if you have any queries, or wish to discuss any aspect of this matter on (03) 9292 1013 or by email at [toby.moritz@news.com.au](mailto:toby.moritz@news.com.au).

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Toby Moritz', is written over the text 'Yours faithfully'. The signature is stylized and loops around the text.

**Toby Moritz**  
Legal Counsel

Enc.

# 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 in 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:

N98043

Victorian Arts Centre Trust t/as Arts Centre Melbourne  
100 St Kilda Road, Melbourne, VIC 3004  
ABN: 83 295 983 059

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

Promotion of an exhibition known as "The Illusionists 2.0" as an entertainment event in Victoria.

(c) Address in Australia for service of documents on that person in relation to this matter:

c/- Toby Moritz  
Legal Counsel  
Herald & Weekly Times Pty Limited  
40 City Road, Southbank  
MELBOURNE VIC 3006  
Email: toby.moritz@news.com.au  
Phone: 03 9292 1013

### 2. Notified Arrangement

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

Tickets to an event to be held on 16 January 2015 at National Gallery of Victoria (**Event**) as described below in paragraph 2(b).

(b) Description of the conduct or proposed conduct:

The Applicant proposes to make 450 complimentary tickets available to the Event, on the terms described below (**Free Tickets**).

The Applicant proposes to make the Free Tickets available on 16 January 2015, on the following terms:

- i. Free Tickets will only be available on presentation of an original coupon from the Herald Sun newspaper published on 16 January 2015 (**Relevant Newspaper**).
- ii. Free Tickets will only be available on 16 January 2015.
- iii. The first 450 people to redeem a valid coupon will receive free entry to the Event.
- iv. There will be a limit of one Free Ticket per person.
- v. There will only be 450 Free Tickets made available and they will be made available on a "first come, first served" basis.
- vi. The promotional offer is exclusive to the Relevant Newspaper in that the Applicant will not make the same offer in another publication or online media at the same time.

**(Proposed Conduct)**

**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:  
 Prospective attendees of the Event.  
 Current and prospective purchasers of the Herald Sun newspaper (hard copy).
- (b) Number of those Persons:
  - (i) At present time:  
 In each case, substantially more than 50
  - (ii) Estimated within the next year:  
 N/A
- (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**

There are a number of significant public benefits which result from the Proposed Conduct. For instance:

- (a) up to 450 people will be able to attend the Event on 16 January 2015 for free;
- (b) the discount may encourage competitors of the Herald Sun (including other newspapers, magazines and online media) to offer customers similar promotions, thus benefitting consumers; and

- (c) the promotion may encourage the operators of other events which are in the same market as or compete with the Event to engage in similar promotions, thus benefitting consumers.

## **5. Market definition**

Whilst on one view, it is not necessary to precisely define the markets affected (as even in the narrowest potential market, the Proposed Conduct will not result in any lessening of competition) we nevertheless offer the following market definitions.

### **(i) The supply of newspapers**

The consumer market for newspapers in Victoria.

### **(ii) The supply of event attendance**

The market for public attendees at major arts events in Victoria.

## **6. Public detriments**

The Proposed Conduct would not result in public detriment, anti-competitive or otherwise, for the following reasons.

- Members of the public would be under no obligation to accept the offer from the Applicant.
- The general public would be free to acquire services from the Applicant without any obligation to purchase the Herald Sun newspaper.
- Many advertisers promote their products through coupons or promotions offered in newspapers, magazine and online media to increase awareness of new products or encourage general brand awareness and loyalty.
- Many printed newspapers, magazines and online media services in Australia offer discount coupons or promotions to third parties' goods and services. This is to encourage loyalty to the publication or online service by customers and advertisers and increases competition between newspapers, media and online media services.
- The Proposed Conduct would have no appreciable effect on competition between providers of news and information services.
- The Proposed Conduct would have no appreciable effect on competition between promoters of major events for spectators in Melbourne.

## **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/- Toby Moritz  
Legal Counsel  
Herald & Weekly Times Pty Limited  
40 City Road, Southbank

MELBOURNE VIC 3006  
Email: toby.moritz@news.com.au  
Phone:03 9292 1013

Dated 8 DECEMBER 2014  
Signed by/on behalf of the Applicant

TOBY PAUL MORITZ

HW.T Tower

(Signature) 40 City Road  
Southbank Victoria 3006

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

(Full Name)

THE HERALD & WEEKLY TIMES

(Organisation)

LEGAL COUNSEL

(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 effected 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.



4 December 2014

**Attention: Tom Winch**  
**Marketing Executive - Retail**  
**The Herald & Weekly Times (HWT)**  
**40 City Road, Southbank VIC 3006**

In relation to our confirmation to participate in a joint promotion in relation to **The Illusionists 2.0** performance organised and promoted by us, we understand that The Herald & Weekly Times Pty Ltd Nationwide News Pty Ltd will be notifying the Australian Competition and Consumer Commission (ACCC) on behalf of **Arts Centre Melbourne** to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the proposed campaign and **Arts Centre Melbourne** participation in it is subject to gaining immunity from prosecution for third line forcing.

As part of the submission to the ACCC for this purpose, we confirm the following details:

Business Details: **Arts Centre Melbourne**

**100 St Kilda Rd Melbourne 3004**

**83295983059**

Product/range: **The Illusionists 2.0** performance runs from 16 January, 2015 – 25 January, 2015 at Arts Centre Melbourne, 100 St Kilda Rd, Melbourne VIC 3004.

Offer Details: **At the event on Friday 16<sup>th</sup> January 2015, the first 450 people will receive free entry.**

- **Only with original newspaper voucher from The Herald Sun**
- **Only with a valid specified event with voucher from that day's Herald Sun**
- **Limit one voucher per person**

Coverage: **Victoria**

**ARTS  
VICTORIA**



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info@artscentremelbourne.com.au  
artscentremelbourne.com.au  
ABN 83 295 983 059



**Arts Centre Melbourne** authorises The Herald & Weekly Times Pty Ltd to lodge a notification with the ACCC on behalf of **Arts Centre Melbourne** in respect of the promotional campaign described above and authorises The Herald & Weekly Times Pty Ltd to deal with any queries from the ACCC on its behalf.

Signature                     L Allan                    

As an authorised representative for and on behalf of **Arts Centre Melbourne**

Name                     Louise Allan                    

Title                     Marketing Campaign Manager                    

Date                     4.12.14