

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)

N99801 Kogan Australia Pty Ltd, ABN 53 152 570 351

N99802 Kogan HK Limited (Company Registration No. 1659337) registered in
Hong Kong

N99803 Kogan Mobile Australia Pty Ltd ACN 603 162 714

(collectively, **Merchant**)

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

[The Merchant supplies consumer goods and services, including but not limited to electronic goods and appliances, clothing, toys, books, telecommunications, data communications devices and travel packages to customers in Australia.

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

Raph Goldenberg, CIE Legal, Level 11, Como Office Tower, 644 Chapel Street, South Yarra, Victoria 3141]

2. Notified arrangement

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

The proposed arrangements relate to the supply of certain additional benefits and services (in particular, the provision of free or discounted shipping services) by the Merchant to certain customers who purchase products from the Merchant online.

(b) Description of the conduct or proposed conduct:

From 25 August 2017, the Merchant and the Australian Postal Corporation (**Australia Post**) propose to offer various services and benefits to customers and in particular, free or discounted shipping costs for eligible products purchased from the Merchant online (where the total amount purchased in a single transaction exceeds \$25) on the condition that the customers also acquire services (being the purchase of a membership and the creation of an online account) from Australia Post as part of Australia Post's new "*DeliveryClub*"¹ promotion.

Further details are set out below.

This conduct may be characterised as the Merchant proposing to:

- supply, or offer to supply, additional benefits and services (e.g. free or discounted shipping on eligible products purchased from the Merchant) to a person, on the condition that the person has or will acquire an eligible online account from Australia Post; and
- refuse to supply certain benefits and services (e.g. free or discounted shipping on eligible products purchased from the Merchant) to a person for the reason that the person has not acquired, or has not agreed to acquire, an eligible online account from Australia Post.

Further details of proposed conduct are as follows:

From 25 August 2017, current and future customers of the Merchant who are members of Australia Post's *DeliveryClub* will be able to access various additional benefits and services, including free or discounted delivery on eligible products purchased through the Merchant's online platform, where the total amount purchased in a single transaction exceeds \$25.

Australia Post has established a website where customers wishing to become *DeliveryClub* members are able to enter their details, pay the applicable membership fee (if applicable) and identify retailers (such as the Merchant) who are participating in the *DeliveryClub* program, and will offer *DeliveryClub* members additional benefits and services, (including free or discounted delivery for online purchases).

The *DeliveryClub* website address is as follows: www.deliveryclub.auspost

Customers who are *DeliveryClub* members using the Merchant's online platform to purchase products will not need to purchase any additional products or services from Australia Post, but will need to have created an online account and have paid the applicable membership fee to Australia

¹ Also known as *Delivery Club* (Powered by Australia Post).

Post, in order to identify themselves to the Merchant as *DeliveryClub* members and obtain access to the additional services and benefits from the Merchant.

(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)

Customers who are *DeliveryClub* members who purchase eligible products online from the Merchant's website where the total amount purchased in a single transaction exceeds \$25.

- (b) Number of those persons:

- (i) At present time:

Not known, but expected to be substantially greater than 50.

- (ii) Estimated within the next year:

(Refer to direction 6)

Not known, but expected to be substantially greater than 50.

- (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 proposed conduct will be of benefit to the public as it will provide benefits to customers who purchase eligible products and services online from the Merchant's website. By acquiring a *DeliveryClub* membership account with Australia Post, *DeliveryClub* members will be able to access additional benefits and services (and specifically, free or discounted delivery on eligible purchases over \$25).

The ability to receive additional benefits that enhance a customer's online shopping experience is likely to encourage broader use of online shopping, to the convenience and benefit of both customers and online retailers.

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

- For customers who are regular users of the Merchant's online shopping services (or those of any other retailer that is participating in the *DeliveryClub* program), a *DeliveryClub* membership could lead to a

reduction in the overall cost of product delivery that those customers incur when online shopping.

- For customers with the perception or concern that the delivery and shipping costs associated with online shopping are uncertain or may be prohibitive, the ability to purchase a *DeliveryClub* membership may also enable them to shop online using the Merchant with increased certainty as to the shipping and delivery costs they will be required to pay.

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 relevant markets may be described as:

- (a) the supply of products online, including but not limited to electronic goods and appliances, clothing, toys, books, telecommunications, data communications devices and travel packages, and;
- (b) the provision of services relating to online shopping, including delivery and shipping of products to consumers.

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 public detriments are likely to result from the proposed conduct.

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

Public detriment is unlikely to occur because:

- the use of online shopping (or “e-commerce”) by merchants and customers in Australia is continuing to grow (by volume and value), and the Merchant anticipates even more competition in this area in the future, with the expected new entry of one or more significant global retailers with a significant online capability;
- the number of consumers potentially affected by the proposed conduct is insignificant, compared to the total number of consumers who shop for products and services online in Australia;

- customers who do not wish to purchase a *DeliveryClub* membership will not be prevented from purchasing the Merchant's products and services that are the subject of this notice at the same price (however they may not be able to access the same additional benefits and services, including free or discounted delivery); and
- customers will remain free to acquire the relevant products and services that are the subject of this notice from the Merchant and a number of other retailers and online suppliers.

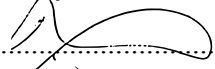
7. Further information

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

Raph Goldenberg, CIE Legal, Level 11, Como Office Tower, 644 Chapel Street, South Yarra, Victoria 3141

Dated.....9 Aug 2017.....

Signed by/on behalf of the applicant


.....
(Signature)

....Ross Metherell.....
(Full Name)

.....Kogan Australia Pty Ltd, Kogan HK Limited, and Kogan Mobile Australia Pty Ltd.....
(Organisation)

.....Director of Strategy.....
(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 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.