



Australian
Competition &
Consumer
Commission

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NEWS RELEASE

Attention: Small business writers

A.C.C.C. ALLEGES CONTRACTS FOR BILL EXPRESS EQUIPMENT ARE RESULT OF THIRD LINE FORCING AND UNENFORCEABLE

The Australian Competition and Consumer Commission has instituted legal proceedings in the Federal Court, Melbourne, against Bill Express Limited (in liquidation) and Technology Business International Pty Ltd (in liquidation) for alleged contraventions of the *Trade Practices Act 1974* in relation to the failed *Bill* EXPRESS* electronic product distribution, promotion, sales and bill payment network.

The ACCC alleges that BXP and Technology Business International engaged in the practice of third line forcing in contravention of section 47 of the Act, by offering to supply to businesses electronic products and services under a Merchant Agreement with BXP, on condition that the businesses acquire different services from Technology Business International – namely, the rental of equipment to deliver those products and services to customers.

The ACCC estimates that, since 2003, between 3500 and 4500 merchants entered Equipment Rental Agreements to rent equipment from Technology Business International as a consequence of the alleged third line forcing. Approximately 2800 merchants have existing contracts.

In addition, the ACCC alleges that in the process of signing businesses up as *Bill* EXPRESS merchants BXP and Technology Business International engaged in false and misleading or deceptive conduct that contravenes sections 52 and 53(g) of the Act.

The ACCC has also commenced proceedings against BNY Trust Company of Australia Limited and Mobius Financial Services Pty Ltd. The ACCC alleges BNY and Mobius were knowingly concerned in the alleged contraventions of section 47 of the Act.

The rights of Technology Business International to receive payment of the monthly rental fee paid by merchants have been assigned to BNY in its capacity as trustee of certain trusts. Although *Bill* EXPRESS is no longer operational, BNY and its agents have continued to demand and debit payment of the equipment rental fee of approximately \$550 per month.

The ACCC's action includes a representative action pursuant to section 87(1B) of the Act on behalf of two merchants.

In addition to declarations that the Act has been contravened (ss. 47(1), 52, 53(g)), the ACCC is also seeking:

- Orders :
 - declaring the Equipment Rental Agreements entered into by two representative merchants to be void
 - that BNY repay to the two representative merchants all monies paid by them to BNY or its agents pursuant to the Equipment Rental Agreements in excess of the amounts received by them under the Merchant Agreement with BXP
 - that findings of fact be made, and
 - that BNY and Mobius pay the ACCC's costs of the proceeding.
 - A permanent injunction:
 - restraining BNY from requesting or recovering any payment from any merchants under the Equipment Rental Agreements or commencing legal proceedings to enforce an obligation of merchants to make payment under the Equipment Rental Agreements,
- OR
- alternatively, restraining BNY from requesting or recovering any payment from two specific merchants under the Equipment Rental Agreements or commencing legal proceedings to enforce an obligation of those specific merchants to make payment under the Equipment Rental Agreements.

The ACCC is also seeking interlocutory injunctions to restrain BNY from taking any steps against merchants under the Equipment Rental Agreements until the determination of the proceedings.

As BXP and Technology Business International are in liquidation the ACCC has sought leave of the court to commence proceedings against those parties.

The matter has been filed in the Federal Court's Fast Track List and is listed for a scheduling conference in Melbourne at 11 a.m. on 17 December 2008.

NR 304/08
30 October 2008

BACKGROUND

**Bill* EXPRESS was a facility that enabled customers to purchase pre-paid products, such as mobile telephone credit, and pay bills over the counter at participating merchants (primarily newsagents). BXP suspended operation of the *Bill* EXPRESS network on 8 July 2008, the same day the company was placed into administration.