

Competitors converge to hem in Cabcharge over breaches

Elisabeth Sexton, *October 1, 2010*



PLAINTIFF law company Slater & Gordon has been retained to investigate suing Cabcharge for damages following the company's admissions in the Federal Court last week that it broke the Trade Practices Act by misusing its market power.

Slater & Gordon has signed a retainer agreement with an aggrieved competitor to Cabcharge and is in talks with three others, its commercial practice group leader, Mark Walter, said yesterday.

"It will take some time to advise those parties as to what rights they have and what action can be taken to recover losses arising out of Cabcharge's conduct," Mr Walter said.

"We are first examining the direct competitors but we won't stop with them."

Cabcharge agreed to pay a \$14 million fine to settle a case with the Australian Competition and Consumer Commission last Friday, less than a fortnight before the trial was due to begin.

It admitted to three breaches of the Trade Practices Act, two relating to its refusal to deal on commercial terms with a Perth competitor, Mpos Australia.

Mpos wanted to be able to process Cabcharge charge accounts on its rival eftpos terminals, and also raised the prospect of launching its own charge card and arranging for it to be processed on Cabcharge terminals.

The third admission related to Cabcharge undercutting three taxi-meter rivals by charging taxi operators \$110 for meters that cost it \$250.

Cabcharge conceded all three contraventions involved misuse of its dominance in the charge-card market with the purpose of deterring competition.

Cabcharge seems to have anticipated that the admissions could make it vulnerable to damages suits.

An agreed statement of facts presented to Justice Ray Finkelstein by both parties said: "Cabcharge agrees to the agreed facts (including any admissions) ... for the purposes of this proceeding only."

When Cabcharge announced the settlement, it said: "The ACCC has acknowledged that they did not raise an allegation as to the effect of the contraventions and did not seek to quantify any loss or damage suffered by consumers or competitors, and Cabcharge denies that any such loss or damage was caused."

In a note to its clients, law firm Allens Arthur Robinson said the ACCC settlement was "not likely to be the end of the process" for Cabcharge.

"Cabcharge now faces the prospect of third parties bringing legal actions for damages, no doubt encouraged by Cabcharge's preparedness to admit contraventions as part of the settlement," Allens partner Kon Stellos said in the note. "If this occurs, there may be further adverse financial consequences for Cabcharge."

Allens has a large practice defending class actions, including acting for Amcor in a suit by its cardboard-box customers claiming damages following a settlement by its alleged cartel partner, Visy Industries, with the ACCC.

Cabcharge shares fell 11¢ to \$5.53 yesterday, 2.8 per cent above its \$5.38 price before the settlement, but well below its \$6.30 peak hours after the settlement was announced.

Source: [The Age](#)