

21 ALIVE

**EXCLUSIVE DEALING
NOTIFICATION**

N30941

Trade Practices Act 1974 – Sub-section 93(1)

To: The Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of persons giving notice:

The Dealer whose details appear at the end of this form.

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

Supply of mobile telephones and digital mobile telecommunications services.

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

c/o Alicia Parker
General Counsel
One.Tel Limited
Level 28, 9 Castlereagh Street
SYDNEY NSW 2000

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

Mobile telephones and digital mobile telecommunication services including billing and other ancillary services.

(b) Description of the conduct or proposed conduct:

See attachment A.

3. (a) Class or classes of persons to which the conduct relates:

Customers and potential customers acquiring, or wishing to acquire, mobile telephones and/or digital mobile telecommunications services.

(b) Number of those persons:

- (i) At present time: 0
- (ii) Unable to estimate at this time.

(c) Where number of persons stated in Item 3(b)(i) is less than 50, their names and addresses:

Not applicable

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Alicia Parker
General Counsel
One.Tel Limited
Level 28, 9 Castlereagh Street
SYDNEY NSW 2000

Dated: 16. 62000.

Signed by/on behalf of the Dealer, who gives this notice:



DEALER'S NAME: Alan Cairns
ORGANISATION:

LIVE IT UP MANAGEMENT Pty Ltd.

ACN 061 741 599



ATTACHMENT A

DESCRIPTION OF THE PROPOSED CONDUCT

1. BACKGROUND

- 1.1 The Dealer has entered into an agreement with One.Tel Limited ("One.Tel") to act as its authorised dealer for the purpose of introducing customers to digital mobile telecommunication services provided by One.Tel.
- 1.2 One.Tel Limited is a provider of digital mobile telecommunication services. It is a carriage service provider in that it resupplies to customers, digital mobile telecommunication services provided by Optus Mobile Pty Ltd. It also intends to provide digital mobile telecommunication services to customers using its own GSM network, and may do so through a related company One.Tel Networks Pty Ltd.
- 1.3 The Dealer purchases mobile telephones from One.Tel and other hardware suppliers, and sells such mobile telephones to customers either alone or in connection with digital mobile telecommunication services provided by One.Tel or One.Tel Networks Pty Ltd.
- 1.4 The Dealer wishes to offer discounts on mobile telephones, to customers who purchase those mobile telephones in connection with digital mobile telecommunication services provided by One.Tel or One.Tel Networks Pty Ltd.
- 1.5 The conduct notified is the sale to customers of mobile telephones by the Dealer, at prices significantly lower than that which customers would ordinarily pay if purchasing the mobile telephones separately. The sales will be conditional upon customers acquiring digital mobile telecommunications services from One.Tel or One.Tel Networks Pty Ltd generally for a specified contract period.
- 1.6 Such discounts may raise the issue of compliance with the third line forcing provisions under s 47(6) and 47(7) of the *Trade Practices Act*.

2. APPLICATION OF THE PUBLIC BENEFIT TEST

- 2.1 The conduct notified is not anti-competitive and is in fact of considerable benefit to the public. Those benefits are:
 - (a) The price of mobile telephones is generally high and operates as a barrier to consumers obtaining a mobile telephone and therefore, access to digital mobile telecommunication services. Offering mobile telephones at a considerable discount where the customer agrees to acquire the mobile telephone in connection with the provision of digital mobile telecommunication services, enables customers to avoid the higher up front cost, and pay for the mobile telephone over the term of the contract.



- (b) The conduct notified provides customers with a choice between purchasing a mobile telephone alone, or purchasing the mobile telephone at a lower price in connection with digital mobile telecommunication services. Customers have generally expressed a preference for the second option. Indeed, the fact Australians have one of the highest per capita mobile telephone ownership rates in the world, can be attributed in part to the low up-front cost of mobile telephones.
- (c) The discounts offered by telecommunication companies on the price of a mobile telephone are considerable, often in the order of 90% or more. Given the competition in the mobile telecommunication services market, it is likely that the discounts being offered by the Dealer from time to time will be equally substantial.
- (d) The proliferation into the telecommunications market of handsets bundled with telecommunications services will exert further downward pressure on the price of mobile telephony access and will lead to greater competition in the telecommunications services market.
- (e) The notified conduct will enable One.Tel to compete with the other larger telecommunications providers such as Telstra and Optus. In particular, the notified conduct will also enable One.Tel to obtain customers on its own GSM network, thereby competing with the other three established carriers.

3.0 NO PUBLIC DETRIMENT

3.1 No public detriment will flow from the notified conduct.

3.2 A common criticism of the sale of bundled products is a loss of transparency in the pricing of the individual components within the bundle. The Dealer is fully aware of the need to inform customers, and to also avoid misleading or deceiving them, in relation to the overall cost payable by the customer when acquiring mobile telephones in connection with digital mobile telecommunication services. The Dealer will take precautions to ensure for example, that the customer is adequately informed of the:

- (a) minimum term of the contract the customer is entering into;
- (b) pricing of the individual components within the bundle such as the monthly access fees and the minimum monthly call spend;
- (c) overall minimum cost of the plan selected by the customer; and
- (d) differences in relevant pricing factors between buying a mobile telephone in concessional and non-concessional circumstances.

3.3 As customers can choose to purchase mobile telephones with or without subscribing to One.Tel's services separately, there is no prospect that the notified conduct will lessen competition in any relevant market. In fact, the conduct is pro-competitive as evidenced by the fact that such arrangements have been in operation for a while, industry wide, effecting lower prices to the benefit of consumers.

