

8 November 2000

FILE No

DOC

Mr J P O'Neil
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602



Dear Mr O'Neil

THIRD LINE FORCING NOTIFICATION

Gratis Nominees Pty Limited wishes to have the flexibility to separately offer to certain of its customers products at a discount, allowance, rebate or credit on condition that the consumer purchases certain products from Optus Mobile Pty Limited.

Gratis Nominees Pty Limited wishes to pay and authorises the ACCC to charge \$100.00 in application fees and enclosed is a cheque for this sum.

If you have any inquiries, please contact me on 0401 710 211.

Yours faithfully,

Diana Cregan
Business Development Manager

Encls.:



FORM G
[Front of Form]

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING
NOTIFICATION

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(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) **Name of person giving notice**

Gratis Nominees Pty Ltd (ACN 089 444 557) ("**Gratis**").

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

Gratis conducts an on-line retail business and operates a reward scheme for its customers whereby customers who participate in Gratis' activities ("Gratis members") can earn Gratis reward points which can be redeemed against discounted products from Gratis ("the Reward Scheme")

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

Diana Cregan, Gratis Nominees Pty Limited, Level 2, 339 Military Road,
Mosman, NSW 2088

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

Gratis proposes to offer its customers (as part of the Reward Scheme) products at a discount, allowance, rebate or credit on condition that the customer purchases certain products from Optus Mobile Pty Limited (ACN 054 365 696) ("**Optus Mobile**").

(b) **Description of the conduct or proposed conduct**

Gratis proposes to offer its customers (as part of the Reward Scheme) products at a discount, allowance, rebate or credit on condition that the customer purchases certain products from Optus Mobile.

It is anticipated that the discounts, allowances, rebates or credits offered by Gratis to Gratis' members will have an aggregate value of no more than \$40, and will take the form of discounted products.

Optus Mobile has also submitted a notification to the Australian Competition and Consumer Commission under section 93(1) of the Act in relation to the proposed conduct.

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

The class of persons to whom the conduct relates is the class of persons in Australia who are members of Gratis's Reward Scheme and who acquire or will acquire mobile telephony products and services from Optus Mobile.

(b) **Number of those persons -**

- (i) At present time - approximately 50 per week.
- (ii) It is estimated that approximately up to 1000 Gratis members will take advantage of the offer within the next year.

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

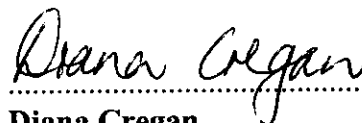
Not Applicable.

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

Diana Cregan, Gratis Nominees Pty Limited, Level 2, 339 Military Road, Mosman, NSW 2088

Dated this November, 2000

Signed by/on behalf of the applicant



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Diana Cregan
Business Development Manager
Gratis Nominees Pty Limited

**SUBMISSION BY GRATIS NOMINEES PTY LIMITED
IN SUPPORT OF NOTIFICATIONS UNDER SECTION 93
OF THE TRADE PRACTICES ACT 1974**

1. Background

Gratis Nominees Pty Limited conducts a business throughout Australia which operates an on-line retail business from its website at www.gratis.com.au ("Gratis"). Gratis also operates a reward scheme for its customers whereby customers who participate in Gratis' activities ("Gratis members") can earn Gratis reward points which can be redeemed against discounted products from Gratis ("the Reward Scheme")

Optus Mobile Pty Limited ("Optus Mobile") is a supplier of mobile telephony goods and services.

Gratis proposes to offer to persons who purchase certain mobile telephony products from Optus Mobile a discount, allowance, rebate or credit off its products by way of its Reward Scheme.

2. Lack of anti-competitive effect

In broad terms the market which the proposed offer is likely to affect is the market for the provision of mobile telephony products and services.

Although the conduct described in Form G may be exclusive dealing conduct within section 47(6) of the Act, Gratis holds the view that the proposed conduct will have a negligible effect on competition in the market noted above.

In Australia there are three main providers of mobile telephony services to customers - Telstra, Vodafone and Optus; they all compete vigorously for customers. Consequently, competitive mobile telephony packages are available to the public at any given time.

The terms and conditions of the proposed offer and the operation of the Reward Scheme will be fully outlined to customers. There may be some customers who will not be entitled to participate in the proposed offer because they are not members of the Reward Scheme or they do not wish to acquire Optus Mobile's mobile telephony service - any exclusions will be clearly outlined in the terms and conditions of the proposed offer.

The proposed conduct is not anti-competitive. Gratis is of the view that its own competitive position can be enhanced by the operation of the Reward Scheme and by offering more services and benefits to its members. The Reward Scheme is aimed at providing Gratis members with a further incentive to take up Optus mobile telephone products and services and related accessories, thus increasing competition in the mobile telephony market.

The proposed conduct does not hamper consumer choice because consumers, if they so wish, are able to acquire the various products and services offered by Optus Mobile on a bundled basis (as part of the Gratis Reward Scheme) or on an unbundled basis (without taking part in the Gratis Reward Scheme). Furthermore, members will not be compelled to take up Gratis' offer to redeem Reward Points and obtain discounted products.

3. Public benefit

The proposed conduct is pro-competitive. It exerts downward pressure on prices offered by other suppliers of mobile telephony products and services.

The Reward Scheme and the discount, allowance, rebate or credit to which the customer is thereby entitled, will help to maintain or increase the level of competition in the already highly competitive market for mobile telephony products and services and offers significant benefits to consumers by giving them the opportunity of obtaining telecommunications products at lower prices.

The proposed conduct does not result in any detriment to the public.

TRADE PRACTICES REGULATIONS

[Back of Form]

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
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. In item 1(b), 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 subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act* 1974 (**the Act**), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act (the prescribed period) unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.