



L A W Y E R S

18 April 2001

BY EXPRESS POST

Mr Tim Grimwade
Acting General Manager of Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Contact
Cam Truong (03) 9672 3550
Email: Cam_Truong@corrs.com.au

Partner
Stephen Kroker

Our reference
SCK/CT/TELS7900-6465146

FILE No
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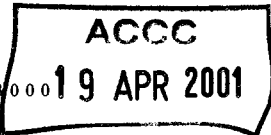
Dear Sir

**TELSTRA CORPORATION LIMITED ("TELSTRA")
THIRD LINE FORCING NOTIFICATION**

We act for Telstra and **enclose**:

- a notification for Telstra in accordance with Section 93(1) of the *Trade Practices Act 1974*, concerning the proposed supply or offering to supply blocks of land that are adjacent to a telecommunications network exchange facility owned by Telstra ("**Exchange Lots**") to purchasers on the condition that these purchasers enter into a building works contract with Transfield Pty Limited ABN 76 000 854 688 to perform various building works and supervise other works at and around the Exchange Lots:
 - as part of town planning permit requirements, prior to any subdivision of the land; and/or
 - as part of any other works reasonably required (whether pursuant to a building permit or otherwise) to segregate or retract the telecommunications network exchange facility from the Exchange Lots prior to settlement;
- submission in support of the notification; and
- a cheque for \$1000 in payment of the applicable statutory fees.

It is Telstra's intention to commence promoting the supply of the Exchange Lots 14 days after the Commission's receipt of the notification.



BOURKE PLACE 600 BOURKE STREET MELBOURNE VIC 3000
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TELEPHONE (03) 9672 3000 INT +613 9672 3000 FAX (03) 9602 5544
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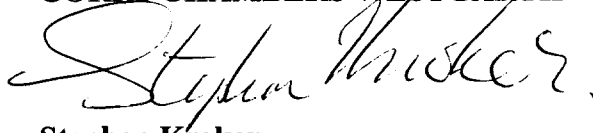
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Australian Competition and Consumer Commission
TELSTRA CORPORATION LIMITED ("TELSTRA")
THIRD LINE FORCING NOTIFICATION

If you require any further information, please contact me on (03) 9672 3494 or
Cam Truong on (03) 9672 3550.

Yours faithfully

CORRS CHAMBERS WESTGARTH



Stephen Kroker
Partner

encl

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
- TELSTRA CORPORATION LIMITED ABN 33 051 775 556 ("**Telstra**")
- (b) Short description of business carried on by that person
- Full range of telecommunications and information services.
- (c) Address in Australia for service of documents on that person
- C/-Corrs Chambers Westgarth
600 Bourke Street
MELBOURNE VIC 3000
Reference: Stephen Kroker
- 2 (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
- Blocks of land which are adjacent to a telecommunications network exchange facility owned by Telstra ("**Exchange Lots**")
- (b) Description of the conduct or proposed conduct
- Supplying or offering to supply the Exchange Lots on the condition that the person supplied or offered supply will enter into a building works contract with Transfield Pty Limited ABN 76 000 854 688 ("**Transfield**") to perform various building works and supervise other works at and around the Exchange Lots:
- as part of town planning permit requirements, prior to any subdivision of the land; and/or
 - as part of any other works reasonably required (whether pursuant to a building permit or otherwise) to segregate or

retract the telecommunications network exchange facility from the Exchange Lots prior to settlement.

(See Direction 4 on the back of this Form)

- 3 (a) Class or classes of persons to which the conduct relates
Telstra, Transfield and all potential purchasers of Exchange Lots.
- (b) Number of those persons -
- (i) At the present time
All potential purchasers of Exchange Lots.
- (ii) Estimated within the next year
120 – 240 potential purchasers.
- (b) 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

Stephen Kroker
Partner
CORRS CHAMBERS WESTGARTH
600 Bourke Street
MELBOURNE VIC 3000

Dated 18 April, 2001

Signed by/on behalf of the person giving this notice

Stephen Kroker

(Signature)

Stephen Kroker

(Full Name)

Partner, Corrs Chambers Westgarth

(Description)

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbers 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 sub-section 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 furnished 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 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 sub-section 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 sub-section 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 sub-section 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.

TELSTRA CORPORATION LIMITED

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1 INTRODUCTION

- 1.1 TELSTRA CORPORATION LIMITED ABN 33 051 775 556 of Level 6, 333 Queen Street, Melbourne, Victoria (“**Telstra**”) is a leading full-service, telecommunications and information services company in Australia, with significant property assets.
- 1.2 Telstra is proposing to sell various parcels of land (“**Exchange Lots**”) adjacent to telecommunications network exchange facilities owned by Telstra (being part of Telstra’s telecommunications network). In some instances, it will be necessary for land to be subdivided to create a separate legal title for the Exchange Lot.
- 1.3 Telstra wishes to supply or offer to supply Exchange Lots to purchasers and prospective purchasers on the condition that purchasers enter into a building works contract with Transfield Pty Limited ABN 76 000 854 688 (“**Transfield**”) to perform various building works and supervise other works at and around the Exchange Lots:
- as part of any planning permit requirements, prior to a subdivision of land; and/or
 - as part of any other works reasonably required (whether pursuant to a building permit or otherwise) to segregate or retract the telecommunications network exchange facility from the Exchange Lots prior to settlement.
- 1.4 Supplying or offering to supply the Exchange Lots on such a condition may involve Telstra engaging in conduct which contravenes the prohibition against third line forcing in subsections 47(6) and (7) of the Trade Practices Act 1974 (“**Act**”).

2 THE DESIRABILITY OF EXCHANGE LOTS

- 2.1 Exchange Lots will increase the number of prime real estate properties available for purchase by commercial and possibly residential customers. Currently, Exchange Lots represent valuable unused real estate in various prime locations.
- 2.2 It is anticipated that the Exchange Lots will create significant commercial and residential property development opportunities, which may also stimulate increased employment and business opportunities.

3 THE DESIRABILITY OF USING ONLY TRANSFIELD ON EXCHANGE LOTS

- 3.1 Telstra has a high level of public responsibility to ensure it uses the highest level of skill and expertise available to ensure any risks to its telecommunications network are minimised. The consequences of a network outage are both extreme and far reaching. Accordingly, Telstra cannot afford to allow network operations and telephone exchange sites to be adversely affected by any necessary building or other works at and around the exchange sites.

- 3.2 Given the high risk and specialist nature of work carried out at telephone exchange facilities, only a limited number of independent contractors have been approved by Telstra to carry out works at these sites.
- 3.3 Transfield has been engaged by Telstra as the facility manager of telephone exchange sites for approximately 3 years. During this time, Transfield has developed a high level of expertise in performing building works and supervising all other works necessary at such sites (such as emergency power plants, earthing grids and lighting protection). Accordingly, Transfield is considered a specialist contractor at Telstra telephone exchange sites and has a proven track record in servicing Telstra's needs at such sites.
- 3.4 As site facility manager, Transfield is in the unique position of being familiar with and having knowledge of each exchange site, Telstra's network site risk management policies and procedures and Telstra's other approved subcontractors at such sites.
- 3.5 Transfield has the experience and knowledge to perform all necessary building works and manage the diversity of contractors required to successfully segregate the telephone exchange site from the Exchange Lot (including observing all regulatory and environmental regulations), while minimising the risk of compromising the telecommunications network infrastructure. Giving Transfield exclusive access to the Exchange Lots will help to ensure this.

4 ANY PUBLIC DETRIMENT?

The only apparent detriment is that purchasers of Exchange Lots will not have the right to choose their contractor to carry out various necessary building and other works on Exchange Lots. It is submitted that this detriment is clearly outweighed by the following public benefits:

- Telstra's proposal will create significant commercial and residential property development opportunities;
- the presence of Transfield will ensure that a high standard of care and supervision is exercised when performing building and other works at and around the Exchange Lots in accordance with Telstra's network site risk management policies and all relevant building and environmental regulations; and
- the presence of Transfield will ensure the risks to Telstra's telecommunications network infrastructure (which has far reaching implications for the public) is minimised.

5 RELEVANT MARKETS

- 5.1 It is submitted that the relevant markets in this case are:
- the market for the provision of commercial and residential property for sale and purchase; and
 - the market for the acquisition of building works and supervisory contracting services.
- 5.2 Supplying or offering to supply Exchange Lots on such a condition would not substantially lessen competition in these markets or any other markets.

6 CONCLUSION

To avoid any risk of contravening the prohibition against third line forcing, Telstra is lodging a notification with the Commission in accordance with sub-section 93(1) of the Act.