

FORM G
Regulation 9

N31106 .

D01/17760



COMMONWEALTH OF AUSTRALIA

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

NOTIFICATION OF EXCLUSIVE DEALING

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 person giving notice:

Pirelli Cables Australia Limited (ABN 14 001 313 551) (**Pirelli Cables**);
Pirelli Power Australia Pty Limited (ABN 09 659 4 080) (**Pirelli Power**).

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

Supply of cables.

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

1 Heathcote Road, Liverpool, NSW 2170.

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

A. Membership services for a loyalty scheme called Team Pirelli.

B. Any cables within product lines supplied by Pirelli Cables or Pirelli Power.

(b) Description of the conduct or proposed conduct

See Attachment A.

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

A. Pirelli Cables and Pirelli Power distributors.

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

A. Anticipated 9 distributors (each distributor has numerous outlets)

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

MMEM 21 Loyalty Road North Rocks
JR Turks Silverwater Central Level 2 77 Parramatta Road Silverwater NSW 2128
Ideal Electrical 54-56 Brookes Street Bowen Hills Qld 4006
Hagenmeyer 456 Lower Heidelberg Road Heidelberg Vic 3084
Middendorp Electrical 372 Victoria Street Brunswick Vic 3056
Atkins Carlyle 44 Belmont Ave Belmont WA 6104
Gemcell Suite 8B/380 Pennant Hills Road Pennant Hills 2120
Rexel 2 Giffnock Avenue North Ryde NSW 2113
P&R PO Box 295 Greenacres SA 5086

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

Mr John Hallam, General Counsel, Pirelli Cables Australia Limited, 1 Heathcote Road, Liverpool, NSW, 2170.

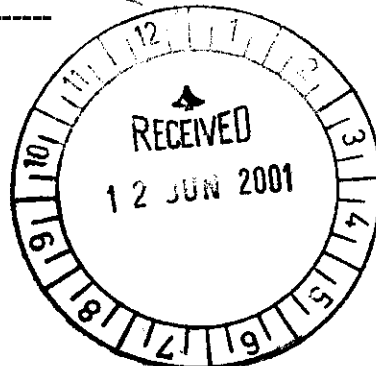
Dated:

Signed by/on behalf of the persons giving this notice:



Brent Fisse
Partner
Gilbert & Tobin

8/6/2001



ATTACHMENT A

SUBMISSION IN SUPPORT OF NOTIFICATION

1. RELEVANT PARTIES

1.1 Pirelli Cables and Pirelli Power

Pirelli Cables Australia Ltd (“Pirelli Cables”) and Pirelli Power Australia Pty Limited are subsidiaries of Pirelli Cai Spa, one of the leading cable manufacturers in the world.

Pirelli Cables and Pirelli Power manufacture cables for both the industrial and commercial sectors. Products range from heavy duty cables as used by various utilities through to domestic cables. Products manufactured in Australia include optical fibre cables up to 144 fibres, copper conductor telephone cables up to 6000 pairs, data cables and instrumentation cables.

Pirelli Cables and Pirelli Power offer customers superior value with its access to five research and development centres within the Pirelli group and its ability to manufacture in compliance with the ISO9001 standard. For example, Pirelli Cables have exported to the Pacific Islands and the Middle East, China, and more recently Thailand, Malaysia and Vietnam.

1.2 Distributors

Pirelli Cables and Pirelli Power have a distribution network of 9 distributors in Australia. Details are set out in Form G above.

1.3 Participating suppliers of products as rewards

The suppliers will be organisations such as AVIS, Country Comfort, Marshall Batteries, Travel.com and Captain Cook Cruises. The relevant category is any organisation that supplies goods or services at retail level in Australian markets.

2. PROPOSED CONDUCT

2.1 Summary of Team Pirelli Membership

Pirelli Cables and Pirelli Power propose to offer a Team Pirelli loyalty and goods/services discount program to Pirelli Cables and Pirelli Power distributors in Australia. This loyalty scheme will apply upon expiry of the statutory 14 days after notification unless the ACCC opposes the notification. The scheme will then apply for 20 years unless the ACCC opposes the notification during that period.

Team Pirelli Membership is open to every distributor which sells Pirelli cables in Australia. Membership is free and members are issued with a plastic card (**membership card**) and access to a website. On obtaining membership, a member has access to a system of loyalty points and a discount card for use at retail outlets participating in the loyalty scheme.

(a) Loyalty points

On becoming a member, Team Pirelli points are accrued each time a distributor orders Pirelli cable products from Pirelli Cable or Pirelli Power. Team Pirelli points are redeemable if the distributor reaches a quarterly target distributor level. Additional Team Pirelli points accrue arrangement also credits bonus Team Pirelli points if the purchases target of the distributor is exceeded by 10 percent or 20 percent or more for a quarter.

Once loyalty points become redeemable, the distributor can choose between over 1000 reward products which are disclosed on the web and on a poster issued to distributors.

(b) Discount Card for retail outlets

The issue of the membership card to the distributor entitles the distributor holding the card (**card holder**) to present it for discounts at nominated suppliers of various goods/services. Participating suppliers will include retailers such as outlined in paragraph 1.3, cinemas, petrol stations, video rental stores, hotels and motels. The supplier of the goods/services agrees with Pirelli Cables and Pirelli Power that they will provide the goods/services to the card holder at a discount, or on particular terms, on the card's presentation. The details of the discounts available are set out in the website teampirelli.com.au (operational as from the date of this notification) and may change over time.

The issue of the discount card does not entail:

- any obligation to use the card to acquire goods/services;
- any exclusivity concerning where the card holder or branch may acquire those goods/services; or
- any fee charged by Pirelli to the card holder for using the card to obtain these discounts.

3. PUBLIC BENEFIT

The proposed conduct will significantly benefit persons acquiring cables in the Australian market for electrical, communications and other cables by increasing the incentives of Pirelli distributors and their staff to vie competitively for the sale of Pirelli cables against competing products. The

impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by the likely detriment to the public.

3.1 Significant Public Benefit

The use of the loyalty scheme will increase competition in the wholesale cable market. By giving Pirelli distributors an additional incentive to market Pirelli cable products aggressively, competitive tension, especially in relation to price, will be intensified, to the advantage of a wide range of customers seeking to acquire cable products.

Major cable manufacturers which supply Australia include the Pacific Dunlop Cables Group, Alcatel, ABB, BICC Ciena, Korning, Draka, Lucent Technologies, NKF and Tyco. Pirelli Cable and Pirelli Power anticipate that Team Pirelli members will seek to maximise sales of Pirelli cable by selling cable at competitive prices, for the benefit of wholesale buyers and end consumers.

3.2 No Public Detriment

The proposed conduct will not substantially lessen competition in any wholesale or retail market for the sale of cables or any other market.

Team Pirelli membership is entirely voluntary and does not 'lock in' distributors or card holders:

In relation to each aspect of the scheme:

- Distributors are free to purchase cable from alternative suppliers. The rewards offered by Pirelli Cable and Pirelli Power are merely another form of encouraging effective competition for cable products between cable suppliers.
- Card holders are free to engage in price comparison concerning the purchase of the product offered as a reward.
- Participating suppliers are free to participate in rival royalty schemes.

As noted in the February 1998 *Guide to Authorisation and Notification of Third Line Forcing Conduct*, the ACCC states in relation to the optional purchase of a second product:

"As long as purchasers of product A have a genuine choice of purchasing it alone such conduct is not inherently anti-competitive...In the absence of misleading information about prices – and provided purchasers are not in fact forced to purchase both products

and have enough information to make an informed decision on the supplier's offer – the conduct would have little anti-competitive effect.'

This conclusion is applicable to the conduct notified in this notification.

3.3 Conclusion

The proposed conduct is similar to many other loyalty schemes in place in Australia. The proposed conduct will not substantially lessen competition in any market nor result in any public detriment. The proposed conduct will result in a significant public benefit as discussed above. On this basis, Pirelli Cables and Pirelli Power notify the conduct to the Commission and welcome its consideration.