



Friday, August 31, 2001

Mr Tim Grimwade  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

D01/40371



Dear Mr Grimwade

**THIRD LINE FORCING NOTIFICATION**

Smile Communications Australia Pty Ltd ("**Smile**") wishes to have the flexibility to offer customers of Optus Internet Pty Limited's internet services a discounted price for online computer system and data back-up services it supplies. I attach a notification in relation to Smile's proposed conduct.

Smile wishes to pay and authorises the ACCC to charge \$100.00 in application fees, please find cheque enclosed.

If you have any queries, please contact me on (02) 9970-5499.

Yours faithfully

David Sellar  
Director  
Smile Communications Pty. Ltd.

- 5 SEP 2001

Smile Communications Pty. Ltd. (ABN: 56 093 013 926)  
Suite 13, Level 1, 5 Vuko Place. Warriewood. NSW 2102  
Tel: +61 (02) 9970-5499 ~ Fax: +61 (02) 9970-5788 ~ E-mail: info@smile.net.au

**FORM G**  
**[Front of Form]**COMMONWEALTH OF AUSTRALIA  
Trade Practices Act 1974 - Sub-section 93(1)

N90893

**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:**

Smile Communications Australia Pty Ltd (ABN 56 093 013 926) (“Smile”).

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

Smile provides online services which allow businesses to back-up their computer systems and data.

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

Suite 13, 5 Vuko Place, Warriewood, NSW 2102.

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

Smile offers to persons who acquire or will acquire online data back-up services supplied by Smile a discount, allowance, rebate or credit on condition that they acquire, or will acquire internet services from Optus Internet Pty Limited (ABN 14 083 164 532) (“Optus”).

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

See Confidential Annexure.

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

Business customers of Optus’s internet services.

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

See Confidential Annexure.

(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:**

David Sellar, Managing Director, Smile Communications Australia Pty Ltd, Suite 13, 5 Vuko Place, Warriewood, NSW 2102.

Dated: 31/8/2001



Signed by the applicant

A handwritten signature in black ink, appearing to be "David Sellar". The signature is written over a horizontal dotted line. Below the signature, there is a small box containing the text "[##]".

DAVID SELLAR,

- Annexure A -

**RESTRICTION OF PUBLICATION**

CLAIMED

GRANTED

DECISION PENDING

**SUBMISSION BY  
SMILE COMMUNICATIONS AUSTRALIA PTY LIMITED IN SUPPORT OF  
NOTIFICATIONS UNDER SECTION 93(1)  
OF THE TRADE PRACTICES ACT 1974**

**1. Background**

- 1.1 Smile Communications Australia Pty Ltd (“**Smile**”) supplies online services which enable businesses to back-up their computer systems and data.
- 1.2 Optus Internet Pty Limited (“**Optus**”) is a wholly owned subsidiary of Cable & Wireless Optus Limited. Optus is a supplier of internet services.
- 1.3 In order to increase the perception of offering value, and to make its services attractive and accessible to business, Smile has developed initiatives such as the provision of discounted offers to targeted consumers such as business customers of Optus’s internet services.

**2. Market**

- 2.1. In broad terms the market which the proposed offer is likely to affect is the market for online computer system and data back-up services.

**3. Public Benefit**

- 3.1. Although the conduct described in Form G may be exclusive dealing conduct within section 47(6) or 47(7) of the Act, Smile holds the view that the proposed conduct will have a negligible effect on competition in the market noted above.
- 3.2. The proposed conduct offers significant benefits to small business by providing online computer system and data backup services at cheaper rates.

**4. Lack of Detriment**

- 4.1. The proposed conduct is not anti-competitive. Customers will be free to acquire Smile’s services on an unbundled or bundled basis. The proposed offer does not require customers to obtain their internet services from Optus.
- 4.2. The market for internet services in Australia is highly competitive with a number of large players competing vigorously for market share. By offering a discounted service with internet services, the proposed conduct will enhance competition in this market.

For the reasons stated above, Smile submits that the public benefit flowing from the proposed conduct outweighs any anti-competitive detriment resulting from the conduct. The proposed conduct is similar to conduct described in other notifications previously lodged with the ACCC, which the ACCC has allowed to stand.