

Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Subsection 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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 engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice Vircom Solutions Pty Limited ACN 099 930 408
and Australian Integrated Finance Pty Limited ACN 078 700 044
(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
Supply of telecommunications equipment and office equipment, and supply of financial services, respectively.

(c) Address in Australia for service of documents on that person
c/- Stockford Limited, Level 22, 207 Kent Street, Sydney NSW 2000 and Level 12, 9 Castlereagh Street, Sydney NSW 2000, respectively

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Financing of telecommunications and office equipment and telecommunications services

(b) Description of the conduct or proposed conduct
See attached submission

(See Direction 4 on the back of this form)

3. (a) Class or classes of persons to which the conduct relates
Users of telecommunications services and telecommunications equipment and office equipment

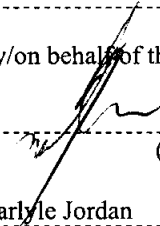
(b) Number of those persons-
(i) At present time Nil

(ii) Estimated within the next year 850

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

4. Names and address of person giving this notice to provide additional information in relation to this notice
Mr Robert Jordan, Partner, Henry Davis York, 44 Martin Place, Sydney NSW 2000

Dated 5th June, 2002

Signed by/on behalf of the applicant giving notice

(Signature)

Robert Carlyle Jordan
(Full name)

Lawyer
(Description)

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.

**SUBMISSIONS IN SUPPORT OF EXCLUSIVE DEALING NOTIFICATION BY
VIRCOM SOLUTIONS PTY LIMITED**

Introduction

1. Vircom Solutions Pty Limited ("**Vircom**") is a supplier of telecommunications and office equipment, which will commence operation with the business described in this notification.
2. Vircom proposes to make telecommunications and office equipment ("**Equipment**") available to business customers under "Integration Agreements", described below. These agreements will not be offered to consumer customers.
3. The Equipment will be made available to the customer in conjunction with an arrangement for the customer to obtain telecommunications services from one of certain nominated telecommunications carriers ("**Carriers**"). These Carriers will be the nominated suppliers for the purposes of this notification.
4. Vircom sees an opportunity to provide benefits to customers of telecommunications services and equipment by arranging the supply of both for customers. Under the structure to be offered by Vircom, the customer will not pay for the use of the Equipment while it is obtaining the telecommunications services. Although other dealers provide both goods and services to customers, the customers are usually required to pay for all items offered, that is both goods and services, rather than only the services, as in the proposed arrangement.
5. Vircom will act as either introducer or agent of the Carrier and the Carrier will pay to Vircom a commission for bringing the business to the Carrier. Payment of the commission enables Vircom to make the Equipment available to the customer without charge to the customer.
6. Because Vircom's commission is dependent on the amount of services obtained by the customer, it requires the customer to commit to Vircom that it will obtain a certain, minimum amount of telecommunications services from the Carrier each month. If the customer does not maintain the anticipated telecommunications usage level, the customer may be obliged to make payments to Vircom. The amount of these payments will be calculated to address, at least in part, the shortfall in commissions which Vircom actually receives from the Carrier.
7. Title to the Equipment will transfer to the customer at the end of a nominated period if the customer continues to take telecommunications services from the Carrier for the period.
8. If certain trigger events occur (generally, those which cause Vircom to cease receiving the commission), such as if the customer terminates its telecommunications services agreement with the Carrier and does not re-sign with another Carrier, provisions are triggered in the Integration Agreement and the customer will be obliged to pay rental for the Equipment. The rental instalments and lease term are disclosed on the face of the Integration Agreement.
9. The first Carrier to be a nominated supplier of telecommunications services for the purposes of this notification is MCI Worldcom Australia Pty Ltd (ACN 081 001 194) ("**Worldcom**"). Vircom is presently in negotiation with other suppliers of

telecommunication services for commission arrangements which will allow Vircom to offer similar equipment supply arrangements to customers of those other suppliers.

10. Customers may present alternative telecommunications service providers to Vircom. Provided the telecommunications service provider agrees to the commission arrangement, the customer may use that service provider as a Carrier.

The Services

11. The Carrier will enter into an agreement with Vircom under which Vircom will be, depending upon the terms required by the Carrier, an introducer or agent of the Carrier in introducing the customer to the Carrier.
12. Vircom will offer to provide Equipment to a customer under an "**Integration Agreement**" and, at the same time, Vircom, on behalf of the Carrier, will invite the customer to enter into a contract with the Carrier for the supply of telecommunications services.
13. The Integration Agreement will address the supply of Equipment only and any services available through the Carrier, such as the telecommunications services, will be provided pursuant to the customer's agreement with the Carrier.
14. An Integration Agreement will be offered to a customer who agrees to obtain telecommunications services from the Carriers who are nominated as suppliers under this notification. Customers may nominate an alternative carrier, but the carrier must agree to a commission arrangement with Vircom to become a Carrier.
15. The customer will be asked to indicate to Vircom its anticipated monthly expenditure on telecommunications services from the Carrier and then commit to Vircom to maintain a certain level of expenditure ("**Expenditure Level**") during the term of the Integration Agreement.
16. Vircom will receive from the Carrier a commission on a monthly basis constituting a proportion of the charges payable by the customer to the Carrier for the telecommunications services.
17. The commission anticipated by Vircom determines the value of the Equipment that will be supplied to the customer. Vircom provides the customer with Equipment which, if it were instead rented to the customer, would require the customer to pay rent instalments approximately equal to the amount of the anticipated commission. This commission will enable Vircom to supply the Equipment to the customer under a bailment arrangement without charging rent for the bailment.
18. At the end of each six monthly period of the Integration Agreement, Vircom will review the amount spent on telecommunications services with the Carrier for that period. In the event the customer has not reached the aggregate of the Expenditure Level for the six-month period, the customer will be liable to pay to Vircom an amount to cover the shortfall which, as presently proposed, will be calculated at 20% of the difference between the Expenditure Level for the period and the fees payable for the actual usage by the customer for the relevant period. This amount is less than the commission foregone by Vircom. Whether Vircom chooses to claim this amount will be at Vircom's discretion.
19. The supply of the Equipment will be financed by Australian Integrated Finance Pty Limited (ACN 078 700 044) ("**AIF**"), pursuant to a principal and agency agreement

between Vircom and AIF under which Vircom will be the undisclosed agent of AIF for the purposes of giving the customer its right to possession of the equipment. The rental which would normally be payable by the customer to AIF for the bailment, if it were a lease, will be paid by Vircom.

20. The share capital of AIF and Vircom have a common beneficial ownership.
21. The Integration Agreement will set out a term ("**Integration Period**") during which the telecommunications services will be taken from the Carrier. At the end of this period, these services may be terminated by the customer and the Equipment returned to Vircom (without any payment being due to Vircom). If the customer does not do so, but continues to take the Carrier's services for a further 6 months ("**Extended Period**"), then title to the Equipment will pass to the customer and the Integration Agreement will terminate.
22. Upon a trigger event (defined below) occurring, the mere bailment arrangement will terminate and a usual lessor/lessee relationship will be established between the customer and Vircom (as agent for AIF) under which rental will be payable or the customer may exercise an option to purchase the Equipment. The **Trigger Events** for this include:
 - (a) failure by the customer to pay the Carrier's charges;
 - (b) failure by the customer to pay an amount due to Vircom for the six month adjustment described in paragraph 18;
 - (c) the Carrier ceasing to supply telecommunications services to the customer;
 - (d) the customer terminating its agreement with the Carrier, unless it is transferring to another Carrier, as referred to in paragraph 14.
23. The terms of the lease which come into effect in these circumstances, are the obligation to pay rental instalments for the remainder of the minimum term of the lease. The minimum term, as presently proposed, would be 60 months calculated from the commencement of the Integration Agreement and the rent instalments would be calculated upon the basis of a 60-months rental. This information will be clearly disclosed on the face of the document signed by the customer (the Application Form to which the terms of the Integration Agreement are annexed).
24. Accordingly, provided that a Trigger Event does not occur, the obligation to pay rental does not come into effect.
25. Further, at the expiration of the minimum term of the rental period, the customer will have the option of either retaining the Equipment or of continuing to rent it for a further 6-months, at the expiration of which period title to the Equipment will pass to the customer.
26. If a Trigger Event does occur, the customer will also have an option to purchase the Equipment for its then current market value.
27. The option or right to acquire the Equipment set out above will not apply in Queensland and Western Australia, since the Hire Purchase Acts in those States make it difficult, if not impossible, for the rights and obligations under the Integration Agreement to be established. However, Vircom proposes to offer the following to the customer, as relevant, as an alternative to returning the Equipment:

- (a) at the end of the Integration Agreement, if no Trigger Event has occurred, the customer will receive title to the Equipment if it continues to take services from the Carrier for a further 6 months;
 - (b) if a Trigger Event has occurred, at the end of the minimum term of the rental the customer will receive title to the Equipment if it continues to pay rental for a further 6 months; and
 - (c) the customer may purchase the Equipment for its then current market value.
28. It is anticipated that the level of commission payable to Vircom, by Worldcom, the first nominated supplier, will be a factor in the rates for telecommunications services which will be offered to customers introduced by Vircom. Vircom understands that Worldcom has a range of rate levels and has been informed by Worldcom that the rates charged under this arrangement may be slightly higher than some rates which may be available to a direct customer of Worldcom, which takes telecommunication services directly from Worldcom and which is not introduced by a dealer or other business originator. However, Vircom understands that those rates will still be competitive with the rates offered by other carriers.

Nominated Suppliers

29. Vircom is currently in negotiations with other carriers, in addition to Worldcom, regarding entering similar arrangements. If these negotiations are successful, Vircom may then introduce customers to those Carriers and offer the Integration Agreements to customers who also sign with those Carriers. Those other Carriers are intended to be future nominated suppliers for the purposes of this notification.

Notified Conduct

30. The above outlined proposal may breach section 47(6)(a) of the *Trade Practices Act 1974* (the "Act") since, at least initially, the only such bailment activities which Vircom (as agent for AIF) proposes to undertake is offering to supply Equipment to Vircom's customers who obtain telecommunications services from a Carrier.
31. The above outlined conduct may breach section 47(6)(b) of the Act in that Vircom will be offering to supply bailment services to Vircom's customers at a particular price, being without charge, on the condition that the customer will acquire certain telecommunications services from a Carrier.
32. The above outlined conduct may be in breach of section 47(6)(c) of the Act in that Vircom will be offering services which enable customers to obtain the Equipment at rates which may amount to a discount from normal retail rental rates, on the condition that the customer acquires certain telecommunications services from a Carrier.

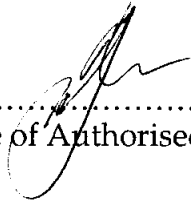
Competition Analysis and Public Benefit of the Notified Conduct

33. It is submitted that the market for the rental of telecommunications and office equipment is highly competitive.
34. Customers under the Integration Agreements with Vircom will have a genuine choice as to whether or not to enter the Integration Agreement and acquire services from the nominated Carrier, to introduce a third party carrier to Vircom to enter into a similar arrangement or to purchase the Equipment directly from Vircom or one of its related companies.

35. If the Carrier can no longer provide the telecommunications services, or a preferable arrangement is available with another Carrier, Vircom may offer to transfer the customer to an alternative Carrier with which it has negotiated a similar commission arrangement, or the customer could elect to negotiate its own arrangement for the provision of telecommunication services and pay rental to Vircom for the balance of the minimum lease term.
36. Vircom understands that the usual structure in the telecommunications market is for the equipment dealer to obtain a commission for introducing the customer to the telecommunications service provider. Both the services and the equipment are paid for by the customer and the dealer is benefited by both the sale price of the equipment and the commission from the carrier. Under the arrangement described in this submission, the dealer, Vircom, enables the customer to obtain both the goods and the services for an overall reduced amount, being the cost of the services only, provided certain terms are met, as described above. Vircom is able to do this because of certain efficiencies in the structure of its arrangements with Equipment providers, the number of customers which it is anticipated will be attracted to this arrangement and, of course, due to the fact that Vircom and AIF have a common beneficial ownership.
37. The customer is given possession of the Equipment, and allowed to use it without charge, for so long as the customer maintains its relationship with the Carrier at the level it represented to Vircom and on which the value of the Equipment provided to the customer is based. The benefit of the commission stream obtained by Vircom is passed on to the customer via the provision of the Equipment without charge.
38. A further public benefit flowing from the proposed conduct is the genuine saving which will be offered to customers in being able to purchase the equipment over a defined period without rent or any other fee being payable for that possession. Although (as referred to in paragraph 28) the charges for telecommunications services may not be the minimum charges available to the market for those services, those charges will be competitive and the customer will have a reduced overall liability by reason of the fact that the customer, instead of paying both for the right to possess the Equipment and telecommunications charges. Vircom believes that under the arrangement the total cost to customers of obtaining the Equipment will be less than it would have been if the Equipment had been acquired in the quite separate transactions of finance and provision of telecommunications services.
39. It is submitted that there will be no detriment to the public arising from the proposed conduct. If a Carrier offered by Vircom is not acceptable to a potential customer (and Vircom anticipates in the future being able to offer one of several Carriers, as nominated suppliers under this notification), that customer may introduce a preferred carrier to Vircom and, provided the carrier is willing to agree to satisfactory arrangements with Vircom, an Integration Agreement may be entered into by the customer. All carriers who are willing to agree to the arrangement are open to do so. It is believed that the proposed conduct will add to competition in both the finance and telecommunications industries.

Dated 5th June 2002

Signed by Vircom Solutions Pty Limited

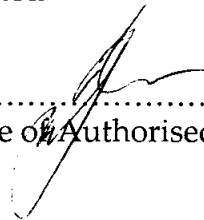


.....
Signature of Authorised Person

Name of Authorised Person:

Robert Carlyle Jordan, Solicitor
Henry Davis York

Signed by Australian Integrated Finance
Pty Limited



.....
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