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FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

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

FILE No:
DOC:
MARS/PRISM:

**EXCLUSIVE DEALING:
NOTIFICATION**



To: The Australian Competition & 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) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:** Virgin Mobile (Australia) Pty Limited.
- (b) **Short description of business carried on by that person:** telecommunications carriage service provider.
- (c) **Address in Australia for service of documents on that person:** Messrs Clayton Utz, Level 34, No.1 O'Connell Street, Sydney, NSW, 2000, Attention: Mr Bruce Lloyd.
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:** Supply of:
 - telecommunications services by VMA;
 - airline travel services by Virgin Blue Airlines Pty Limited ("**Virgin Blue**");
 - consumer goods and services by a range of retailers including:
 - Virgin Music;
 - In2Music;
 - Virgin Megastore;
 - The Strathfield Group;
 - Harvey Norman;
 - Vintage Cellars; and
 - Video Ezy ("**Community Program Members**")(more specifically described at Appendix "A" hereto).
- (b) **Description of the conduct or proposed conduct:** See Appendix "A" hereto.
3. (a) **Class or classes of persons to which the conduct relates:** VMA, related bodies

corporate of VMA, Community Program Members and all retail customers and all potential customers of VMA.

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

(i) **At present time:**

All customers and potential customers of VMA.

(ii) **Estimated within the next year:**

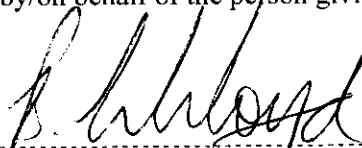
The estimated number of customers with whom VMA is likely to deal in the course of conduct over the next year is unknown but is likely to substantially exceed 50.

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

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:** Mr Bruce Lloyd, Clayton Utz, Level 34, No.1 O'Connell Street, Sydney, NSW, 2000 (Telephone: (02) 9353 4219; Facsimile: (02) 8220 6700).

Dated: 21 October 2002

Signed by/on behalf of the person giving this notice



Bruce Lloyd
Partner
Clayton Utz

for and on behalf of Virgin Mobile (Australia) Pty
Limited

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.

APPENDIX "A"

The proposed conduct comprises:

1. offers by VMA and the supply by VMA pursuant to such offers, of telecommunications services at a discounted price from time to time on the condition that the offeree purchases, or has purchased, goods or services from Community Program Members (which may include related bodies corporate of VMA) as specified from time to time by VMA; and
2. offers by Community Program Members, and the supply by Community Program Members pursuant to such offers, of various consumer goods and services at a discounted price from time to time to customers of VMA on the condition that the offeree has acquired or will acquire telecommunications services from VMA.

Submission

1. Introduction

1.1 VMA

VMA conducts its business as retailer of telecommunications goods and services. It is a subsidiary of Virgin plc.

Customers who acquire telecommunications services from VMA fall into two categories:

- (a) customers who have entered into a contract for the acquisition of telecommunications services from VMA and who are billed monthly for those services ("**post-paid**"); and
- (b) customers who have purchased a pre-paid package from VMA. These customers are not issued with monthly accounts but purchase recharge cards or credits from VMA which entitle the customer to make calls using their mobile phone to the value of the recharge card or credit ("**pre-paid**").

1.2 VMA's Community Program

VMA plans to launch a Community Program under which any existing VMA customer is:

- (a) offered discounts by VMA's Community Program Members on various consumer goods and services offered for sale by those persons; or
- (b) offered discounts on his or her telecommunications account by VMA where the customer acquires goods or services from VMA's Community Program Member.

For example, VMA will offer a credit to VMA customers who acquire airline services from Virgin Blue.

These discounts will be offered to all VMA customers, that is, both post-paid and pre-paid. Where a discount is provided by way of a credit to the VMA customer, it will be provided as follows:

- (a) **post-paid customers:** the discounted amount will be credited to the customer's monthly VMA account;
- (b) **pre-paid customers:** the discounted amount will expire at the same time as the expiry of a recharge card or credit for the same or next lower value as the discount.

For example, a credit of \$15 will expire after the same time period as a \$15 recharge card. Where the discount amount falls between the values of recharge cards, for example, where the discount is \$18 and VMA offers recharge cards for \$15 and \$20, the expiry period of the discount will correspond to that of the recharge card of lower value.

1.3 VMA's Community Program Members

Community Program Members of VMA, both current and future, are retailers which offer for sale a wide range of goods and services to consumers. VMA's current Community Program Members are:

- (a) Virgin Music;
- (b) In2Music;
- (c) Virgin Megastores;
- (d) The Strathfield Group;
- (e) Harvey Norman;
- (f) Vintage Cellars; and
- (g) Video Ezy.

Virgin Music, In2Music and Virgin Megastore are each retail music and entertainment stores, offering for sale such entertainment products as CDs, videos, DVDs.

The Strathfield Group offers for sale a range of consumer electrical goods, including telecommunications products. It is also a distributor for the promotion and sale of VMA goods and services.

Harvey Norman offers for sale a wide range of consumer household goods, including electrical goods, computer equipment, whitegoods and furniture. It is also a distributor for the promotion and sale of VMA goods and services.

Vintage Cellars offers a wide range of packaged liquor for retail sale.

Video Ezy is a consumer video rental business, where members of Video Ezy may rent a range of videos and DVDs and may also purchase videos and DVDs.

2. Proposed s.47(6) conduct

2.1 VMA/Virgin Blue conduct

VMA proposes to offer a credit to its existing mobile phone customers if the customer acquires services from a related body corporate of VMA. This conduct could be characterised as a offer by VMA of a discount on telecommunications services on condition that the customer will acquire services from Virgin Blue.

For example, VMA proposes to offer a credit to its existing customers if they acquire airline services from Virgin Blue by booking their airline ticket through a link on Virgin Mobile's website to Virgin Blue's online booking system. The Virgin Mobile customer will be offered a credit equal in value to 5% of the airfare (each sector) for flights when booked and paid for through the Virgin Mobile website. This credit will be provided by VMA as a credit on the customer's Virgin Mobile account.

2.2 VMA/Community Program Member Conduct

VMA proposes to enter into a Community Program under which each Community Program Member will offer, and supply, various products or services at discounts from time to time to existing Virgin Mobile customers.

This conduct could be characterised as the offer of a discount by the Community Program Member on the condition that the customers is a Virgin Mobile customer, who has acquired, and will continue to acquire, telecommunications services from VMA.

By way of example, the following table sets out the discounts to be offered by each current Affinity Partner and the conditions of that offer:

<i>Affinity Partner</i>	<i>Offer</i>	<i>Conditions</i>
Virgin Music In2Music Virgin Megastores	10% off CDs, games, DVDs	Not to be used in conjunction with any other offer.
The Strathfield Group	5% off everything in store	Not to be used in conjunction with any other offer.
Harvey Norman	10% off entertainment and software products	Not to be used in conjunction with any other offer. At participating stores only. The participating stores will be clearly stated in all promotional material relating to the offer.

<i>Affinity Partner</i>	<i>Offer</i>	<i>Conditions</i>
Vintage Cellars	\$5 off Stolichnaya vodka	Not to be used in conjunction with any other offer. Limit of 2 per visit.
Video Ezy	Rent one get one free	Not to be used in conjunction with any other offer. At participating stores only. The participating stores will be clearly stated in all promotional material relating to the offer. Normal membership and hiring conditions apply. A VMA customer will need to be a member of Video Ezy to rent a video. Limit 1 redemption per member per day.

2.3 Provision of Community Program information to customers

The discounts available to VMA customers through the Community Program will be promoted by VMA to its customers by SMS message, bill insert and website notice from time to time. It will also be promoted by the Community Program Members using point of sale and other advertising material provided by VMA from time to time.

By these means, VMA will notify customers of:

- (a) the discount or credit if the customer elects to acquire qualifying goods or services from a related body corporate such as Virgin Blue or an Community Program Member;
- (b) details of the qualifying goods or services;
- (c) the time period in which the discount or credit will be available to customers;
- (d) any limits to the offer. Examples of those conditions are set out in Table 1.

Customers will therefore be in full possession of the material information pertinent to a purchase decision prior to purchasing products.

2.4 No anti-competitive effect

If this conduct is caught by section 47(6), VMA believes that the conduct does not have any anti-competitive effect and it is not against the public interest for the following reasons:

- (a) the link between the discount offered by VMA and the acquisition of goods or services from Virgin Blue or other related bodies corporate will be clearly disclosed in writing to Virgin Mobile customers through SMS, bill insert and website notice as set out above;
- (b) the link between the discount offered by a Community Program Member and the

acquisition of telecommunications services from VMA will also be clearly disclosed in writing to Virgin Mobile customers through SMS, bill insert and website notice as set out above;

- (c) the Community Program is promoted only to existing VMA customers, that is, customers who, at the time the discount is made available, have already entered into a contract for the acquisition of telecommunications services from VMA or have purchased a pre-paid mobile phone package from VMA at the time the proposed discount is offered to them. The discount is an additional benefit or service offered by VMA and the customer is not required or compelled to acquire the goods or services to which the offer relates as a condition of their acquisition of telecommunications services from VMA.
- (d) VMA has only a small share of the mobile telecommunications market in Australia and competes with Telstra, Vodafone, Optus and a large number of smaller service providers. The proposed conduct will not affect the choice of mobile telecommunications providers available to customers.
- (e) The proposed conduct will have no adverse effect on competition in the markets for:
 - (i) airline services; and
 - (ii) the other consumer goods and services to which the offer relates.

Each of the markets in which the Affinity Partners operate are highly competitive. For example, there will continue to be a wide choice of:

- (i) airline services;
 - (ii) CDs, games and DVDs;
 - (iii) consumer electrical goods and other household goods and services of the kind offered for sale by The Strathfield Group and Harvey Norman;
 - (iv) packaged liquor; and
 - (v) video rental.
- (f) VMA, Virgin Blue and Virgin Music Group (Australia) Pty limited are members of the Virgin Group. The notified conduct should be permitted to allow the Virgin group to offer airline services, music and video products and telecommunications

services and offer a discount for this "package", as well as to offer the products separately at the prices which would otherwise apply to the products;

- (g) consumers will not be forced to purchase telecommunications services or any of the other goods or services to which the offers relate. Consumers will retain the freedom to buy each of those goods or services individually from VMA, Virgin Blue, any of the Community Program Members or their competitors.

2.5 Public Interest

The proposed conduct is in the public interest because:

- (a) where consumers choose to accept the offer, consumers will benefit by obtaining airline tickets and the other consumer goods and services to which the offers relate at cheaper prices;
- (b) the conduct will not be detrimental to competition, given that VMA given the highly competitive nature of the retail markets for the other consumer goods and services to which the offers relate;
- (c) competition in the mobile telecommunications market will be enhanced by VMA's ability to offer a discount on the mobile telecommunications services it offers.