

# MALLESONS STEPHEN JAQUES



**Confidential communication**

Regional Director  
Australian Competition and Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Vic 3000

23 March 2003

Dear Sir

FILE No:
DOC: D04/14720
MARS/PRISM:

**Exclusive Dealing Notification - sub-sections 47(6) and (7) of the Trade Practices Act 1974**

I refer to Telstra's letter to the Commission dated 18 November 2003 ("**November 2003 Letter**"), and the Commission's letter to Amanda Bodger of Mallesons Stephen Jaques dated 15 January 2004 ("**Commission Response**").

## **November 2003 Letter and Commission Response**

The November 2003 Letter:

- (a) outlined conduct proposed to be engaged in by Telstra Licensed Shops that are operated by third parties under licence from Telstra, which conduct ("**Notified Conduct**") is summarised below; and
- (b) enclosed notices in relation to the Notified Conduct in accordance with sub-section 93(1) of the Trade Practices Act 1974.

The Commission Response notified Telstra that immunity from the Trade Practices Act came into effect in relation to the Notified Conduct on 3 December 2003, and that, on the basis of the information provided to the Commission, the Commission did not intend to take any further action in relation to the matter at that stage.

## **The Notified Conduct**

Telstra undertakes campaigns to promote its mobile services from time to time. In accordance with the notices enclosed with the November 2003 Letter, certain Telstra Licensed Shop licensees currently participate in these campaigns by offering certain inducements to customers on condition that they acquire or agree to acquire mobile services or particular mobile plans from Telstra.

## **New licensees**

This letter encloses five new notices that Telstra is lodging in accordance with sub-section 93(1) of the Trade Practices Act 1974, on behalf of entities recently appointed as licensees by Telstra to operate Telstra Licensed Shops. These new licensees, listed in the Attachment to this letter, propose to engage in the Notified Conduct.

# MALLESON'S STEPHEN JAQUES

Australian Competition and Consumer Commission

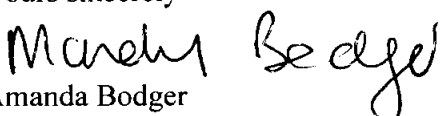
23 March 2003

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Also enclosed is a cheque for \$500 for the fees payable in respect of lodgment of the five new notices.

Please feel free to contact Gerry O'Brien on 9643 4472 if you have any queries or comments.

Yours sincerely



Amanda Bodger

Partner

Direct line +61 3 9643 4096

Direct fax +61 3 9643 5999

## **Exclusive Dealing: Notification**

*Trade Practices Act 1974 - sub-section 93(1)*

### **Attachment: List of new Telstra Licensed Shop licensees**

<b>No.</b>	<b>Name</b>	<b>ABN/ACN</b>
1	Mobily Pty Ltd	ABN 72 647 226 258
2	Peninsula Telecommunications Pty Ltd	ABN 68 107 052 004
3	Countrywide Communications (Coffs Plaza) Pty Ltd	ABN 58 076 374 564
4	Padfone Pty Ltd	ACN 107 494 244
5	The Carfone Telecommunications Group Pty Ltd	ABN 44 011 035 359

**FORM G****Regulation 9****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 proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

Mobily Pty Ltd (ABN 72 647 226 258) ("TLS") operates a Telstra Shop under license from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra mobile services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

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

TLS will offer a range of goods or services ("TLS Products") to customers on condition that they acquire mobile services from Telstra including gift vouchers, mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

TLS proposes to:

- (i) supply or offer to supply a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra;
- (ii) refuse to supply or refuse to offer to supply a TLS Product to retail customers for the reason that the customer has not acquired or has not agreed to acquire mobile services or particular mobile plans from Telstra;

- (iii) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

The proposed conduct will be of benefit to the public because it will allow retail customers to purchase TLS Products at a discount.

The proposed conduct will not lessen competition because:

- (i) the retail markets for the TLS Products are characterised by large numbers of competitors and very intense competition; and
- (ii) TLS does not have a substantial degree of market power in any relevant market.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Retail customers (including small and medium enterprise customers).

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

- (i) **At present time:** Substantially greater than 50.
- (ii) **Estimated within the next year:** Substantially greater than 50.

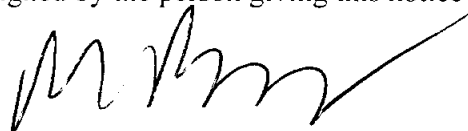
**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

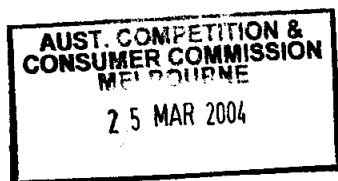
Dated 18 February 2004

Signed by the person giving this notice



Amanda Bodger

Partner, Mallesons Stephen Jaques



## 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 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 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 sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice 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.

**FORM G****Regulation 9****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 proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

Peninsula Telecommunications Pty Ltd (ABN 68 107 052 004) ("TLS") operates a Telstra Shop under license from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra mobile services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

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

TLS will offer a range of goods or services ("TLS Products") to customers on condition that they acquire mobile services from Telstra including gift vouchers, mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

TLS proposes to:

- (i) supply or offer to supply a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra;
- (ii) refuse to supply or refuse to offer to supply a TLS Product to retail customers for the reason that the customer has not acquired or has not agreed to acquire mobile services or particular mobile plans from Telstra;

- (iii) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

The proposed conduct will be of benefit to the public because it will allow retail customers to purchase TLS Products at a discount.

The proposed conduct will not lessen competition because:

- (i) the retail markets for the TLS Products are characterised by large numbers of competitors and very intense competition; and
- (ii) TLS does not have a substantial degree of market power in any relevant market.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Retail customers (including small and medium enterprise customers).

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

- (i) **At present time:** Substantially greater than 50.
- (ii) **Estimated within the next year:** Substantially greater than 50.

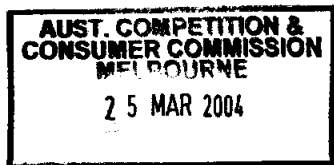
**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

Dated 18 February 2004

Signed by the person giving this notice



  
Amanda Bodger

Partner, Mallesons Stephen Jaques



## **DIRECTIONS**

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- 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 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 sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice 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.

**FORM G****Regulation 9****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 proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

Countrywide Communications (Coffs Plaza) Pty Ltd (ABN 58 076 364 564) ("TLS") operates a Telstra Shop under license from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra mobile services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

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

TLS will offer a range of goods or services ("TLS Products") to customers on condition that they acquire mobile services from Telstra including gift vouchers, mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

TLS proposes to:

- (i) supply or offer to supply a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra;
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The proposed conduct will be of benefit to the public because it will allow retail customers to purchase TLS Products at a discount.

The proposed conduct will not lessen competition because:

- (i) the retail markets for the TLS Products are characterised by large numbers of competitors and very intense competition; and
- (ii) TLS does not have a substantial degree of market power in any relevant market.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Retail customers (including small and medium enterprise customers).

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

- (i) **At present time:** Substantially greater than 50.
- (ii) **Estimated within the next year:** Substantially greater than 50.

**(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:**

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
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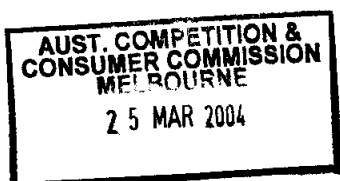
Dated 18 February 2004

Signed by the person giving this notice



Amanda Bodger

Partner, Mallesons Stephen Jaques



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- 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.
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## NOTICE

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**FORM G****Regulation 9****COMMONWEALTH OF AUSTRALIA***Trade Practices Act 1974 - sub-section 93(1)***EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition and Consumer Commission:

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**1. (a) Name of person giving notice:**

Padfone Pty Ltd (ACN 107 494 244) ("TLS") operates a Telstra Shop under license from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra mobile services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

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

TLS will offer a range of goods or services ("TLS Products") to customers on condition that they acquire mobile services from Telstra including gift vouchers, mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

TLS proposes to:

- (i) supply or offer to supply a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra;
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- (iii) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

The proposed conduct will be of benefit to the public because it will allow retail customers to purchase TLS Products at a discount.

The proposed conduct will not lessen competition because:

- (i) the retail markets for the TLS Products are characterised by large numbers of competitors and very intense competition; and
- (ii) TLS does not have a substantial degree of market power in any relevant market.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Retail customers (including small and medium enterprise customers).

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

- (i) **At present time:** Substantially greater than 50.
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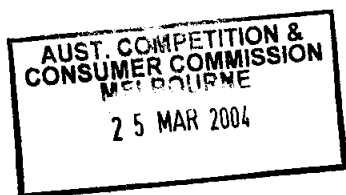
**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

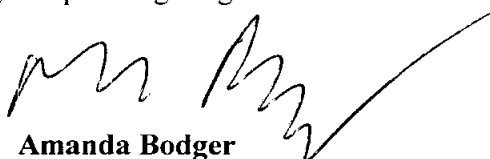
**4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

Dated 18 February 2004

Signed by the person giving this notice



  
Amanda Bodger

Partner, Mallesons Stephen Jaques

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**FORM G****Regulation 9****COMMONWEALTH OF AUSTRALIA***Trade Practices Act 1974 - sub-section 93(1)***EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition and Consumer Commission:

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**1. (a) Name of person giving notice:**

The Carphone Telecommunications Group Pty Ltd (ABN 44 011 035 359) ("TLS") operates a Telstra Shop under license from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra mobile services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

C/- Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

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

TLS will offer a range of goods or services ("TLS Products") to customers on condition that they acquire mobile services from Telstra including gift vouchers, mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

TLS proposes to:

- (i) supply or offer to supply a TLS Product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra;
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- (ii) **Estimated within the next year:** Substantially greater than 50.

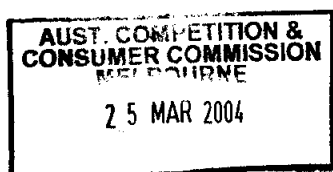
**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 28, Rialto  
525 Collins Street  
Melbourne VIC 3000  
Tel: 9643 4069

Dated 18 February 2004

Signed by the person giving this notice



  
Amanda Bodger

Partner, Mallesons Stephen Jaques

## **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 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 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 sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice 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.