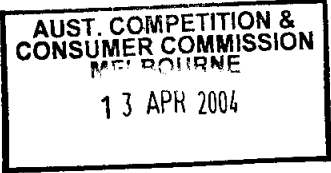


8 April 2004

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Mr Tim Grimwade  
General Manager - Adjudication  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602



Dear Mr Grimwade

**Primus Telecommunications Pty Ltd**

FILE No:
DOC: D04 / 17 294
MARS/PRISM:

We act on behalf of Primus Telecommunications Pty Ltd (**Primus**) and enclose:

- notification under section 93(1) of the *Trade Practices Act* 1974 (**TPA**); and
- a cheque in the amount of \$100 as payment of the required fee.

## 1. Background

### *The parties*

- 1.1 Primus Telecommunications Pty Ltd (ACN 071 191 396) (**Primus**) is a telecommunications carrier that provides a range of telecommunications services and related services including fixed line telephony services (local, national and international), mobile telephony services and internet services.
- 1.2 Primus is one of the competitive new carriers that entered the Australian market after the Federal Government's decision to fully deregulate the telecommunications industry in Australia in an attempt to increase price and product competition within the industry.
- 1.3 Foxtel Cable Television Pty Limited and Foxtel Digital Television Pty Limited provide subscription television services to over one million homes Australia wide (**Television Services**). Foxtel Management Pty Limited (**Foxtel**) is part of the Foxtel Group which is responsible for, amongst other things, entering into agreements with consumers for the supply of both cable and digital subscription television services to consumers.

*Promotional proposal*

1.4 Primus proposes to offer special deals on services supplied to residential customers that acquire Television Services from Foxtel. These special offers may include discounted prices, allowances, rebates and credits. For example, Primus may offer customers:

- (a) a specified number of free local calls;
- (b) discounted local calls; and/or
- (c) discounted internet services

provided the customer acquires Television Services from Foxtel.

1.5 This offer will not be limited to new Foxtel customers.

1.6 We note that other participants in the telephony services and subscription television services market already offer their customers very similar packages. Under its 'Telstra Reward Packages' program, Telstra offers customers who acquire fixed line telephony services and Foxtel Television Services from Telstra a five per cent discount off the price regularly charged for these services. If the customer also acquires mobile telephony services or internet services from Telstra, the discount is increased to ten per cent. Telstra has received statutory immunity from third line forcing from the Commission under the notification process.

1.7 Similarly, under its 'yes rewards' program, Optus offers customers who obtain multiple Optus services (including telephony, internet and subscription television services) a range of discounts or allowances including discounted services, discounted installation fees and free local calls. Optus has also received statutory immunity from third line forcing for a range of packages of telecommunications services and subscription television services under the notification process.

**2. Notified Conduct**

2.1 The notified conduct may be formulated as follows:

- (a) Primus supplying, or offering to supply, goods or services at a particular price on the condition that the customer acquires or agrees to acquire Television Services from Foxtel;
- (b) Primus refusing to supply, or refusing to offer to supply, goods or services at a particular price for the reason that the customer has not acquired, or has not agreed to acquire, Television Services from Foxtel;
- (c) Primus giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit on goods and services it provides on the condition that the customer acquires or agrees to acquire Television Services from Foxtel; and

- (d) Primus refusing to give or allow, or refusing to offer to give or allow, a discount, allowance, rebate or credit on goods and services it provides for the reason that the customer has not acquired or has not agreed to acquire Television Services from Foxtel.

2.2 We appreciate that the conduct outlined above may be construed as falling within the prohibitions contained in sections 47(6) and 47(7) of the TPA. However, for the reasons discussed in section 3, we submit that the public benefits associated with the conduct clearly outweigh any public detriment caused by the conduct.

### 3. Competition Issues

#### *Overview of competition issues*

3.1 We submit on behalf of our clients that the Commission should not serve a notice under section 93(3A) of the TPA because:

- (a) the conduct in question will not adversely affect competition in any relevant market; and
- (b) the conduct in question will result in public benefits and no public detriment.

#### *Effect on competition*

3.2 We do not believe that the notified conduct can have any adverse effect on competition in any of the relevant markets. We consider that the relevant markets for assessing this notification are:

- (a) the retail market for subscription television services in Australia;
- (b) the retail market for fixed line telephony services in Australia; and
- (c) the retail market for internet service providers in Australia.

3.3 Since the deregulation of the telecommunications industry, the number of participants in the telephony markets has increased substantially. Competition in these markets has also increased considerably when compared with the monopolistic nature of the market that existed just over a decade ago. Recently, there has also been increased competition in the marketing of subscription television services.

3.4 The proposed conduct will not lessen competition because:

- (a) customers will be able to acquire the products and services offered by Primus on usual conditions without acquiring services from Foxtel;
- (b) customers will be able to easily identify the price of each of the services they acquire;
- (c) the proposed offers will enhance Primus' ability to compete effectively against other telecommunications providers;

- (d) the markets for both telephony and internet products and services in Australia are characterised by increasing levels of competition;
- (e) Primus does not have a substantial degree of market power in any relevant market;
- (f) Primus' offer of discounts or bonuses is not conditional on the customer obtaining Foxtel from particular suppliers;
- (g) customers are able to acquire the relevant products and services from a range of other suppliers;
- (h) any advantage Primus might gain as a result of the conduct will not be beyond a competitor's response; and
- (i) customers are not required to enter into long term contracts in order to be eligible for the discounts and bonuses.

3.5 In fact, rather than having a negative effect on competition in the relevant markets, we submit that the proposed conduct is exactly the kind of price competition the Federal Government had hoped for when it commenced its deregulation of the telecommunications industry in 1992.

3.6 As discussed above, the two largest telecommunications service providers currently offer discounts and allowances of a type similar to those proposed by Primus. In order to remain competitive it is essential that Primus is able to offer similar promotions.

*Public benefits*

3.7 The proposed conduct will be of benefit to the public as it will:

- (a) reduce costs to customers who would not otherwise be able to negotiate discounts or other benefits in relation to the goods and services provided by Primus;
- (b) provide customers with opportunity to obtain the goods and services provided by Primus at a reduced price or on more favourable terms;
- (c) promote competition in the relevant markets by encouraging competitors to offer similar promotions and offers; and
- (d) assist the long term viability of the subscription television services industry in Australia by potentially increasing subscription levels.

*Public detriment*

3.8 We do not believe that the notified conduct causes any identifiable detriment to the public.

**4. Conclusion**

- 4.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of this notification. This is because the notified conduct will cause little, if any, detriment and will generate public benefits.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Richard Murphy or Arlen Duke of our office.

Yours faithfully

**MINTER ELLISON**



Contact: Arlen Duke Direct phone: +61 3 8608 2340 Direct fax: +61 3 8608 1322  
Email: arlen.duke@minterellison.com  
Partner responsible: Richard Murphy Direct phone: +61 3 8608 2705  
Our reference: RDM 30-4526358

**Form G****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 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.

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

Primus Telecommunications Pty Ltd (ACN 071 191 396) (**Primus**).

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

Primus supplies a range of telecommunication services and related services including fixed line telephony services (local, national and international), mobile telephony services and internet services.

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

C/- Richard Murphy  
Minter Ellison Lawyers  
Level 16  
525 Collins Street  
Melbourne Vic 3000

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

Telephony services and internet services supplied by Primus (**Telephony Services**).

Subscription television services (cable and digital) and associated products and services (**Television Services**) by Foxtel Management Pty Limited (ACN 068 671 938) (**Foxtel**).

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

Primus supplying, or offering to supply, its Telephony Services at a particular price on the condition that the customer acquires, or agrees to acquire, Television Services from Foxtel.

Primus refusing to supply, or refusing to offer to supply, its Telephony Services at a particular price for the reason that the customer has not acquired, or has not agreed to acquire, Television Services from Foxtel.

Primus giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit on its Telephony Services on the condition that the customer acquires, or agrees to acquire, Television Services from Foxtel.

Primus refusing to give or allow, or refusing to offer to give or allow, a discount, allowance, rebate or credit in relation to Telephony Services for the reason that the customer has not acquired, or has not agreed to acquire, Television Services from Foxtel.

*Examples of the proposed conduct are set out below:*

Primus will offer customers who acquire Television Services from Foxtel:

- (a) a specified number of free local calls;
- (b) discounted telephone calls; and/or
- (c) discounted internet services.

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

Customers who acquire Television Services from Foxtel.

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

- (i) At the present time:

Foxtel currently supplies approximately 1 million Australian households (including wholesale customers).

- (ii) Estimated within the next year:

Approximately 1 million Australian households.

**(c) Where the 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:**

Richard Murphy  
Minter Ellison Lawyers  
Level 16  
525 Collins Street  
Melbourne Vic 3000

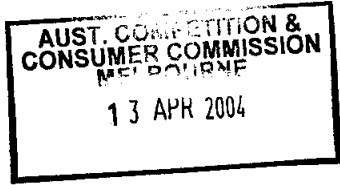
**DATED** this 16 day of April, 2004.

**SIGNED** by/on behalf of the applicant

*Richard Murphy*  
\_\_\_\_\_  
(Signature)

RICHARD MURPHY  
\_\_\_\_\_  
(Full Name)

PARTNER - MINTER ELSON  
\_\_\_\_\_  
(Description)





## DIRECTIONS

1. Where there is insufficient space on this form to furnish 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 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 sub-section 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 sub-section 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 June 30 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 sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct or a kind referred to in sub-section 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.