

# MALLESON'S STEPHEN JAQUES

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

28 October 2004

Dear Sir/Madam

## Notification of Third Line Forcing Exclusive Dealing

We enclose for lodgement an exclusive dealing notification on behalf of FujiFilm Australia Pty Limited (ABN 80 000 064 433), together with a cheque for the applicable lodgement fee of \$100.00. The exclusive dealing notification relates to proposed arrangements involving Telstra and FujiFilm.

Please do not hesitate to contact Melissa Monks ((03) 9643 4406) of this office should you have any queries or comments.

Yours faithfully

*Mallesons Stephen Jaques*

Encls. 1

FILE No:	
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**COMMONWEALTH OF AUSTRALIA  
TRADE PRACTICES ACT 1974 - Subsection 93(1)  
EXCLUSIVE DEALING NOTIFICATION**

**TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION:**

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or proposed conduct of a kind referred to in subsection 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

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

FujiFilm Australia Pty Limited (ABN 80 000 064 433) of 114 Old Pittwater Road, Brookvale, New South Wales, 2100 ("Fuji").

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

Fuji supplies a wide range of retail camera and film products, and provides related services including photo imaging, film processing, etc.

**(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

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

Broadband and narrowband internet services and associated products and services supplied by Telstra Corporation Limited of 242 Exhibition Street, Melbourne, Victoria, 3000 ("Telstra") from time to time including its BigPond ADSL service, BigPond Cable service and BigPond Satellite service and associated internet starter packs and self-installation kits ("**BigPond Services**").

Products and services supplied by Fuji from time to time including photo imaging services ("**Fuji Services**").

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

For limited promotional periods, Fuji proposes to:

- (i) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a Fuji Service to customers on the condition that the customer acquires or agrees to acquire a BigPond Service; and
- (ii) refuse to give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a Fuji Service for the reason that the customer has not acquired or has not agreed to acquire a BigPond Service.

### **Example of the proposed conduct**

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

- promote competition in relevant markets by encouraging competitors of both Fuji and Telstra to offer similar benefits;
- reduce the costs of customers who may be otherwise unable to negotiate benefits in relation to Fuji Services and BigPond Services on their own behalf; and
- provide customers with the opportunity to obtain the BigPond Services with additional inclusions.

The proposed conduct will not substantially lessen competition because:

- customers will be able to acquire Fuji Services at the usual retail price without acquiring any goods or services from Telstra;
- customers will be able to acquire the BigPond Services at the usual retail price without acquiring any goods or services from Fuji;
- customers may acquire the relevant products and services from a range of other suppliers;
- the number of persons potentially affected by the proposed conduct is insignificant compared to the total number of customers who acquire Fuji Services and BigPond Services; and
- competition in the markets for retail camera and film products and services and broadband internet services is vigorous and there are many suppliers in these markets.

The applicant believes that the benefits from the proposed conduct outlined above will outweigh any possible detriment considered to arise from the conduct.

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

Members of the public generally.

**(b) Number of those persons**

More 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

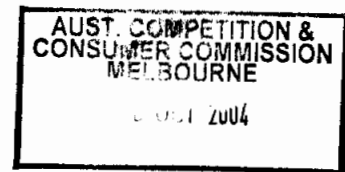
Dated: 28 October 2004

Signed on behalf of the person giving this notice:



Amanda Bodger

Solicitor



## 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 the 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.