

MALLESONS STEPHEN JAQUES

AUST. COMPETITION & CONSUMER COMMISSION SYDNEY
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15 NOV 2004

15 November 2004

Mr Tim Grimwade
 General Manager
 Adjudication Branch
 Australian Competition & Consumer Commission
 470 Northbourne Avenue
 DICKSON ACT 2602

c/o: Sydney office
 Level 7, Angel Place
 123 Pitt Street,
 Sydney NSW 2000

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade

**Telstra Corporation Limited - National Farmers' Federation *Telstra NFF Members'*
*Discount Plan***

In this matter, we act for Telstra Corporation Limited.

We enclose for your attention:

- a copy of an exclusive dealing notification for lodgment; and
- the applicable lodgment fee of \$1,000.

We would be grateful for your confirmation of receipt. If you have any questions in relation to this matter, please do not hesitate to contact myself or Trish Henry on (02) 9296 2181.

Yours sincerely



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 Email peta.stevenson@mallesons.com

TH Trish Henry
 Partner
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 Direct fax +61 2 9296 3999

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:

Telstra Corporation Limited (“**Telstra**”) (ABN 33 051 775 556).

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

Telstra is a telecommunications and information services company.

As required by legislation, the Commonwealth of Australia owns a majority of the issued shares in Telstra. The remaining issued shares in Telstra are widely held by members of the investing public. Shares in Telstra are traded on the Australian Stock Exchange, the New Zealand Stock Exchange and the New York Stock Exchange.

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

c/- Patricia Anne Henry
 Partner
 Mallesons Stephen Jaques
 Level 60, Governor Phillip Tower
 1 Farrer Place
 Sydney NSW 2000

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

This notification relates to a range of telephony, internet and other telecommunications services offered by Telstra. The telephony services include fixed-line telephony services, pre-selection to Telstra for long-distance telephony services, mobile and other telephony services.

(b) Description of the conduct or proposed conduct:

Telstra proposes to offer and supply telecommunications services at a discount, and with allowances, rebates or credits, to customers who will become financial members of the National Farmers' Federation Limited (ABN 72 097 140 166) or associations affiliated with the National Farmers' Federation (“**Prospective Members**”) under the Telstra NFF Members' Discount Plan.

The Telstra NFF Members' Discount Plan will be offered and supplied to Prospective Members who choose to acquire from Telstra at least one full service

fixed line telephony service and who are billed directly by Telstra for their access, local and long distance services.

If a Prospective Member acquires from Telstra at least one full service fixed line telephony service billed directly by Telstra on a single bill and elects to participate in the Telstra NFF Members' Discount Plan they will be eligible to receive a discount each billing cycle for eligible calls made from that fixed line telephony service. The discount will be 6 per cent initially and may increase to 7.5% if the number of associations affiliated with the National Farmers' Federation for the purposes of the Telstra NFF Members' Discount Plan increases.

A Prospective Member may also choose to acquire from Telstra any of the following eligible services as a part of the Telstra NFF Members' Discount Plan:

- (i) an additional eligible fixed line service;
- (ii) an eligible mobile telephony service on a contract plan;
- (iii) an eligible BigPond internet service (excluding ADSL and Cable services) under a contract plan of at least 12 months,

(“eligible services”).

If a Prospective Member acquires at least one full service fixed line telephony service from Telstra together with one or more eligible services, which services are consolidated onto the same bill as the Prospective Member's full service fixed line telephony service, they will be eligible to receive a each billing cycle for eligible calls made from each of the eligible services (up to a maximum of 9 fixed line services, 5 mobile services and 5 internet services). The discount will be 6% initially and may increase to 7.5% if the number of associations affiliated with the National Farmers' Federation for the purposes of the Telstra NFF Members' Discount Plan increases.

The prices charged to Prospective Members for each component of the Telstra NFF Members' Discount Plan will be separately itemised on each Prospective Member's bill, so the pricing of each component will be transparent to the Prospective Member.

Telstra may refuse to offer or supply telecommunications services at a particular price or refuse to give or allow a discount, credit, rebate or allowance, to customers who are not financial members of the National Farmers' Federation.

Net public benefit arising from Telstra's proposed conduct

The proposed conduct will result in a net public benefit because:

- (i) the proposed conduct will increase competition in telephony and other telecommunications services in rural and regional areas, by stimulating other telecommunications service providers to match or better Telstra's offering;
- (ii) the proposed conduct will provide rural and regional customers with access to competitively priced telecommunications services and the opportunity to save money on their telephony services and receive benefits for no additional charge; and

- (iii) the price of each component of any package will be transparent. As such, the proposed conduct will benefit Prospective Members by allowing them to assess the respective merits of competing offers from telecommunications service providers with the benefits offered by the Telstra NFF Members' Discount Plan.

Further, the proposed conduct will not result in any detriment to the public because:

- (i) the proposed conduct will be voluntary. Each service the subject of the Telstra NFF Members' Discount Plan will be available separately from Telstra and a number of other suppliers of telecommunications services;
- (ii) the Commission recognises that third line forcing conduct which is voluntary on the part of the customer is usually beneficial. For example, in the Commission's publication entitled Guide to Authorisation and Notification for Third Line Forcing Conduct, dated February 1998, the Commission states:

Accordingly, ... [the Commission] does not pursue all third line forcing conduct of which it becomes aware ...

The Commission is unlikely to be concerned where potential purchasers have a genuine choice, based on quality and price, whether or not to purchase product A alone or to accept the supplier's third line forcing terms for the package of products A and B.

In particular, third line forcing conduct under which customers can buy the package of products A and B at a real saving on the total price of the products bought separately in competitive markets, has positive benefits in terms of competition and consumer welfare and would not be opposed by the Commission;¹

- (iii) the proposed conduct does not require Prospective Members to acquire multiple services from Telstra in order to receive a benefit. A Prospective Member who only acquires one full fixed line telephony service will receive a benefit even if the Prospective Member does not acquire other telecommunications services from Telstra;
- (iv) the proposed conduct does not require Prospective Members to acquire additional services from Telstra in order to receive a benefit. An existing full service fixed line telephony service makes a Prospective Member eligible for the discount; and
- (v) the proposed conduct will not place barriers in the paths of competitors. The proposed discounts, allowances, rebates and credits are modest and competitors will be able to match or better them.

For all the reasons set out above, the proposed conduct will increase competition in all relevant markets and will give rise to net benefit to the public.

¹ Page 17.

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

Rural and regional customers of telephony and other telecommunications services.

(i) **At present time:** Approximately 37,000 persons are eligible to become members of the National Farmers' Federation or an association affiliated with the National Farmers' Federation for the purposes of the Telstra NFF Members' Discount Plan.

(ii) **Estimated within the next year:** Substantially greater than 50.

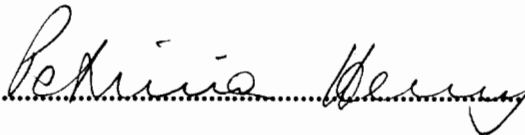
(b) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

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

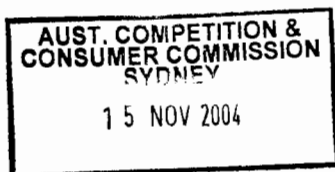
Patricia Anne Henry
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated 15 November 2004

Signed on behalf of the person giving this notice



Patricia Anne Henry
Partner



DIRECTIONS

- 2 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.
- 3 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.
- 4 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.
- 5 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.
- 6 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 7 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.