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L A W Y E R S

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Contact

Janine Gillen
Telephone (07) 3259 7051

Our reference

JZG DJW 07 1376 8787

22 November 2004

Dear Sir/Madam

Notification of Third Line Forcing Exclusive Dealing

We enclose the following:

- an exclusive dealing notification under subsection 93(1) of the *Trade Practices Act 1974 (Cth)*; and
- a cheque for the applicable lodgement fee of \$1,000.

The exclusive dealing notification relates to proposed arrangements involving Telstra and Netgear Pty Limited.

Please do not hesitate to contact Janine Gillen on (07) 3259 7051 of this office should you have any queries or comments.

Yours faithfully



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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 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**
Netgear Pty Limited (ABN 19 001 320 421) of Level 11, Tower B, 821 Pacific Highway, Chatswood (**Netgear**)
- (b) **Short description of business carried on by that person**
Netgear supplies networking software and hardware products and services to retail customers. These products include broadband ADSL and cable modem products.
- (c) **Address in Australia for service of documents on that person**
c/ - David Wenck, Blake Dawson Waldron, 123 Eagle street, Brisbane, 4000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**
Products and services supplied by Netgear, from time to time including networking software and associated products and services (**Netgear Products**).

Broadband and narrowband internet services and associated broadband products and services supplied by Telstra from time to time including its BigPond ADSL service and BigPond Broadband Cable service (**Telstra Internet Products**)
- (b) **Description of the conduct or proposed conduct**

For a limited period, Netgear proposes to:
 - (i) give or offer to give a discount, allowance, rebate or credit in relation to a Netgear Product to retail customers on the condition that the customer acquires or agrees to acquire a Telstra Internet Product; and

2.

- (ii) refuse to give or offer to give a discount, allowance, rebate or credit in relation to a Netgear products for the reason that the customer has not acquired or has not agreed to acquire a Telstra Internet Product.

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

- allow retail customers to acquire Netgear Products at a discount; and
- increase competition in the relevant markets by encouraging Netgear's competitors to offer similar value added services.

The proposed conduct will not lessen competition because:

- customers will be able to acquire Netgear Products at the usual price without acquiring any services from Telstra;
- competition in the relevant markets for internet services and networking software is vigorous and there are many suppliers in these markets;
- the number of customers potentially affected by the proposed conduct is small compared to the total number of customers who acquire internet services; and
- customers may acquire the relevant products and services from a range of other suppliers at competitive rates.

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**

Customers who acquire Netgear Products from Netgear.

(b) **Number of those persons**

(i) **At present time**

None

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

More than 50

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

Not applicable

3.

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

David Wenck, Blake Dawson Waldron, 123 Eagle Street, Brisbane, Queensland, 4000.

Telephone: (07) 3259 7219

Dated 22/11/04

Signed by the person giving this notice



David Wenck

Partner, Blake Dawson Waldron

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.