

BLAKE DAWSON WALDRON

L A W Y E R S

AUST. COMPETITION &
CONSUMER COMMISSION
BRISBANE

20 DEC 2004

Regional Director
Australian Competition and Consumer Commission
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Partner
David Wenck
Telephone (07) 3259 7219

Contact
Susan Gray
Telephone (07) 3259 7143

Our reference
SGR DJW 07 1376 8787

20 December 2004

Dear Sir/Madam

Notification of Third Line Forcing Exclusive Dealing

We act for Telstra Corporation Limited (**Telstra**).

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 Microsoft Pty Limited.

Please do not hesitate to contact Susan Gray on (07) 3259 7143 of this office should you have any queries or comments.

Yours faithfully



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COMMONWEALTH OF AUSTRALIA
TRADE PRACTICES ACT 1974 – Subsection 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**
Telstra Corporation Limited (ABN 33 051 775 556) of Level 6, 151 Clarence Street, Sydney
(Telstra)
- (b) **Short description of business carried on by that person**
Provision of telecommunications services and products including fixed line services, mobile services and internet services.
- (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**
This notice relates to:
 - (i) Telstra broadband internet services and associated broadband products and services offered from time to time including its BigPond ADSL service and BigPond Broadband Cable service (**Telstra Internet Products**); and
 - (ii) membership to the xbox.com.au website and the Xbox *Live* subscription gaming service (**Microsoft Gaming Services**) supplied by Microsoft Pty Ltd of 1 Epping Road, North Ryde, New South Wales, 2113 (**Microsoft**).
- (b) **Description of the conduct or proposed conduct**

Until 30 June 2005, Telstra proposes to offer to existing and new members of the Microsoft Gaming Services a credit of \$129 on their first or second BigPond Broadband bill when that member accepts Telstra's BigPond ADSL and Cable terms and conditions and enters into a 24 month contract to acquire any BigPond ADSL or Cable plan or service (other than non-qualifying services notified by Telstra) (**Offer**). The Offer is available to any person who registers as a member of xbox.com.au during the period 20 November 2004 to 30 June 2005 (**Offer Period**) and who successfully applies to Telstra for a BigPond broadband service before 31 October 2005.

Currently, there are approximately 60,000 members of the Microsoft Gaming Services. The anticipated uptake of the Offer is approximately 250 to 500.

2.

The relevant conduct may (unless properly notified) contravene section 47 of the *Trade Practices Act 1974* (Cth).

The relevant conduct is nevertheless pro-competitive and there are clear public benefits arising from this conduct which will outweigh any possible public detriment.

Public benefit and lack of public detriment

The relevant conduct will have no public detriment. Indeed, it is likely to increase competition and be beneficial to the public because the conduct will:

- permit a customer to acquire a Telstra Internet Product at a discount which would not otherwise be available to that customer;
- encourage Telstra's competitors to develop similar offers in order to compete with Telstra which will increase the availability of competing discounts and offers for similar products; and
- offer greater convenience for customers in their dealings with Telstra and Microsoft.

Impact on competition

The proposed conduct will not lessen competition on the basis that:

- there will continue to be a wide choice available to customers and customers will be under no obligation to acquire a Telstra Internet Product;
- Telstra Internet Products can still be acquired by customers at the usual prices without the requirement that customers also acquire products from Microsoft;
- competition for the supply of internet services is very strong and there are many suppliers in these markets;
- the proposed conduct is likely to affect only a comparatively small number of customers in the relevant market who acquire, or are likely to acquire, internet products and services; and
- the relevant products and services are available from a range of alternate suppliers.

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

Customers who acquire Telstra Internet Products from Telstra.

(b) **Number of those persons**

3.

More than 50 and probably between 250 to 500 people.

(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 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 17/12/04

Signed by the person giving this notice

M. W. L.

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.