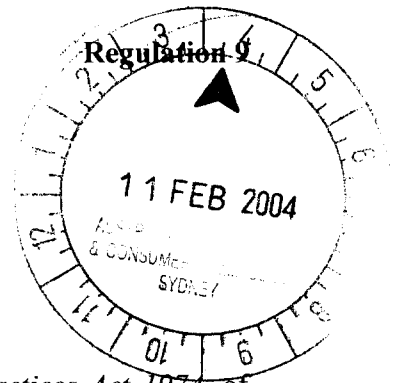


**FORM G**

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 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)

Telstra Pay TV Pty Limited ("Telstra Pay TV") (ABN 65 095 931 614), a wholly-owned subsidiary of Telstra, has also lodged a related notification with the Commission.

Telstra and Telstra Pay TV have previously lodged other related notifications with the Commission (see N31170, N31233 and N31245 for Telstra and N31171, N31232 and N31244 for Telstra Pay TV).

**(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 of Telstra is 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.

Telstra owns all of the issued share capital in Telstra Pay TV. Telstra Pay TV resells subscription television and related services to customers who acquire telecommunications services from Telstra.

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

C/- Sharon Louise Henrick  
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.

This notification also relates to subscription television and related services. The subscription television and related services are acquired by Telstra Pay TV from the FOXTEL Partnership (“FOXTEL”) and AUSTAR United Communications Limited and AUSTAR Entertainment Pty Limited (together “AUSTAR”) and resupplied by Telstra Pay TV to customers, with Telstra’s telecommunications services.

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

Telstra proposes to offer and supply telecommunications services, and to offer and supply such services at a discount, and with allowances, rebates or credits to customers who acquire subscription television and related services supplied by Telstra Pay TV.

The subscription television and related services supplied by Telstra Pay TV may be FOXTEL’s digital subscription television and related services, or AUSTAR’s new subscription television and related services. The subscription television and related services will be supplied by Telstra Pay TV pursuant to the related notification lodged with the Commission (referred to at 1 (a) above).

**Telstra’s telecommunications services to be supplied with Telstra Pay TV’s offering of FOXTEL’s digital subscription television and related services**

Telstra proposes to offer and supply telecommunications services, and to offer and supply such services at a discount, and with allowances, rebates or credits, to customers who acquire FOXTEL’s digital subscription television and related services from Telstra Pay TV and who elect to participate in Telstra’s Rewards Packages programme and who agree to receive a single bill for the telecommunications and subscription television and related services. The customers may be retail customers or business customers.

Telstra’s Rewards Packages programme will comprise:

- (i) a 5% discount off eligible charges for customers who acquire a fixed-line telephony service (pre-selected to Telstra for long distance calls) together with either an eligible mobile telephony service, an eligible internet service or FOXTEL’s subscription television and related services from Telstra or Telstra Pay TV (as the case may be) on a single bill; and
- (ii) a 10% discount off eligible charges for customers who acquire a fixed-line telephony service (pre-selected to Telstra for long distance calls) together with two or more of an eligible mobile telephony service, an eligible internet service, or FOXTEL’s subscription television and related services from Telstra or Telstra Pay TV (as the case may be) on a single bill.

The 5% or 10% discount off FOXTEL’s digital subscription television and related services will apply to monthly subscription fees for FOXTEL’s digital subscription television and related services, including FOXTEL’s basic service, tiers, games, and a la carte channels from Telstra Pay TV. However, certain services will not be eligible for the 5% or 10% discount.

The prices charged to customers for each component of Telstra's Rewards Packages programme will be separately itemised on each customer's bill, so the pricing of each component will be transparent to the customer.

Telstra may refuse to offer or supply telecommunications services at a particular price and refuse to give or allow a discount, credit, rebate or allowance, to customers who do not acquire, or who do not agree to acquire, FOXTEL's digital subscription television and related services from Telstra Pay TV.

**Telstra's promotions of its telecommunications services to be supplied with Telstra Pay TV's offering of FOXTEL's digital subscription television and related services**

In addition to the ongoing discounts off eligible charges as described above, Telstra intends from time to time to promote its telecommunications services to customers by giving or allowing discounts, allowances, rebates or credits, to customers who also acquire FOXTEL's digital subscription television and related services from Telstra Pay TV.

Telstra may offer customers the chance to win prizes, offer and supply transient discounts, allowances, rebates or credits to select groups of customers who acquire any of FOXTEL's subscription television and related services from Telstra Pay TV and a telecommunications service from Telstra, or who refer new customers to Telstra Pay TV.

The transient promotional discounts, credits, rebates and allowances may, for example, involve Telstra offering movie or sporting tickets, gift vouchers, e-commerce or other telecommunications products, or a credit or rebate on Telstra's telecommunications and information services.

The promotional prizes offered by Telstra may comprise, for example, holidays; tickets to special events as well as entertainment before or after the special event; subscriptions to a season of a particular type of sport, such as football, basketball, or motor racing; or audio, visual or audio visual equipment, such as a stereo system or a television set; or a combination of all or any of these.

The promotional prizes will be offered to a very small number of customers whose names will be drawn from a larger number of entrants.

Each promotional discount, allowance, rebate and credit may be offered for up to six months at a time, although the period over which the customer may receive the promotional discount, allowance, rebate and credit may be greater than six months.

Telstra may refuse to offer and supply prizes, discounts, allowances, rebates or credits, to customers who do not acquire, or do not agree to acquire FOXTEL's subscription television and related services from Telstra Pay TV.

**Telstra's telecommunications services to be supplied with Telstra Pay TV's offering of AUSTAR's new subscription television and related services**

Telstra proposes to offer and supply telecommunications services, and to offer and supply such services at a discount, and with allowances, rebates or credits to retail customers who acquire AUSTAR's new subscription television and related services

from Telstra Pay TV in the areas where AUSTAR supplies its subscription television and related services, except the cabled areas of the Gold Coast.

Customers who acquire AUSTAR's new subscription television and related services from Telstra Pay TV will be required to acquire a fixed line telephony service from Telstra and agree to receive a single bill for their fixed line telephony services from Telstra and AUSTAR's new subscription television and related services from Telstra Pay TV.

If a customer wishes to acquire AUSTAR's new subscription television and related services from Telstra Pay TV and the customer also wishes to participate in Telstra's Rewards Packages programme, the customer will become eligible for a discount from Telstra for telecommunications services as follows:

- (i) if the customer acquires their fixed line telephony service as part of Telstra's Rewards Packages programme, the customer will be entitled to receive a 5% discount off their eligible call charges;
- (ii) if the customer acquires their fixed line telephony service and their mobile telephony service as part of Telstra's Rewards Packages programme, the customer will be entitled to receive a 10% discount off their eligible call charges; and
- (iii) if the customer acquires their fixed line telephony service and their internet service as part of Telstra's Rewards Packages programme, the customer will be entitled to receive a 10% discount off their eligible call charges and a 10% discount off their eligible internet services.

Unlike the proposed offering of FOXTEL's digital subscription television and related services, customers will not be required to become a member of Telstra's Rewards Packages programme in order to acquire AUSTAR's subscription television and related services from Telstra Pay TV.

However, customers who are not members of Telstra's Rewards Packages programme may not receive discounts off their telecommunications and other services acquired from Telstra and will be charged Telstra's standard retail prices for those services.

Telstra may refuse to offer or supply telecommunications services at a particular price and refuse to give or allow a discount, credit, rebate or allowance, to customers who do not acquire, or do not agree to acquire, AUSTAR's new subscription television and related services from Telstra Pay TV.

**Telstra's promotions of its telecommunications services to be supplied with Telstra Pay TV's offering of AUSTAR's new subscription television and related services.**

In addition to the ongoing discounts off eligible charges as described above, Telstra intends from time to time to promote its telecommunications services to customers by giving or allowing discounts, allowances, rebates or credits to customers who also acquire AUSTAR's new subscription television and related services, in the same way as it promotes FOXTEL's digital subscription television and related services, as described above.

## **Net public benefit arising from Telstra's proposed conduct**

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

- (i) the proposed conduct will increase competition in telephony and other telecommunications services markets in which components of Telstra's Rewards Packages programme are supplied, by stimulating other telecommunications service providers to match or better Telstra's and Telstra Pay TV's offering;
- (ii) the proposed conduct will benefit customers of subscription television services by providing them with discounted subscription television services packages;
- (iii) the proposed conduct will benefit customers of subscription television services by enabling Telstra Pay TV to continue to be an alternative supplier of FOXTEL and AUSTAR's subscription television services;
- (iv) the proposed conduct will further stimulate competition for the supply of subscription television and related services to customers who wish to acquire those services together with other telecommunications services, or on a stand-alone basis;
- (v) the proposed conduct will result in customers being able to receive prizes, sporting tickets, movie passes, gift vouchers, e-commerce and other telecommunications products, transient discounts, credits, rebates and allowances on particular subscription television services (such as tier or a pay-per-view service) for no additional cost to the customer;
- (vi) the proposed conduct will result in efficiencies as a result of Telstra Pay TV and Telstra being able to exploit economies of scope and scale, especially with respect to installation services for subscription television and internet services. These efficiencies will, for example, benefit customers who acquire cable subscription television and internet services from Telstra Pay TV and Telstra since Telstra Pay TV and Telstra may waive installation fees;
- (vii) the proposed conduct will allow customers to benefit from the consolidation of their subscription television and telecommunications services on a single bill, which will reduce transaction costs for customers who may otherwise receive separate bills for each of their subscription television and telecommunications services;
- (viii) the proposed conduct will assist the long-term viability of the industry. To date, the subscription television services industry has been characterised by significant annual losses and relatively low, flat penetration rates; and
- (ix) the proposed conduct will increase competition in telephony and other telecommunications services markets in which components of Telstra's Rewards Packages programme are supplied, by stimulating other telecommunications service providers to match or better Telstra's and/or Telstra Pay TV's offerings.

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

- (i) the proposed conduct is a very technical type of third line forcing conduct which will be engaged in by two related companies. If Telstra and Telstra Pay TV were not related companies but different business units within the same company, and they engaged in the conduct described in this notification, they would not be engaging in third line forcing conduct. By accepting the Dawson Committee's recommendation to amend the third line forcing provisions to exempt related companies, the Commonwealth Government has recognised the lack of detriment associated with the type of third line forcing conduct described in this notification. If the *Trade Practices Act 1974* is amended to reflect the Government's position, the proposed conduct would not amount to third line forcing;
- (ii) other suppliers of the components of Telstra's Rewards Packages programme actively offer and supply their products along the lines described in this notification. The proposed conduct would merely allow Telstra and Telstra Pay TV to engage in the same type of activity as their competitors;
- (iii) the price of each component of any package including subscription television services will be transparent;
- (iv) the proposed conduct will be voluntary. Each component of Telstra's and Telstra Pay TV's packages will be available separately from a number of other suppliers of telecommunications services including FOXTEL, AUSTAR, AAPT and Optus;
- (v) 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;<sup>1</sup>*

- (vi) the proposed conduct will not place any barriers in the paths of competitors. The proposed discounts, allowances, rebates and credits are modest and competitors will be free to match or better them; and
- (vii) the confidential re-supply agreements between Telstra and FOXTEL, and Telstra and AUSTAR are not exclusive. FOXTEL and AUSTAR are free to

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<sup>1</sup> Page 17.

supply their subscription television services to other entities, including telecommunications companies for re-supply to retail customers in competition with AUSTAR, FOXTEL and Telstra Pay TV. In fact, TransACT and AAPT offer packages of FOXTEL's subscription television services in competition with Telstra Pay TV and Telstra. Further, Primus is also reported to be negotiating an agency or re-supply arrangement with FOXTEL. The proposed conduct, therefore, will not lessen the ability of competitors to compete on the merits of their services.

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.

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

Retail customers of subscription television, telephony and other telecommunications services.

(i) **At present time:** None.

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

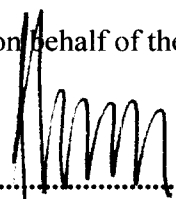
**(b) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:** Not applicable.

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

Sharon Louise Henrick  
Partner  
Mallesons Stephen Jaques  
Level 60, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

Dated 11 February 2004

Signed on behalf of the person giving this notice

  
.....  
Sharon Louise Henrick  
Partner

