

FILE No:
DOC:
MARS/PRISM:



ACCC  
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Canberra  
ACT 2601

Marcus Bourget  
Corporate Counsel

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By Post & Email

14 December 2007

Dear Sir / Madam

**s93(1) Notification**

Please find enclosed a s.93(1) TPA notification in respect of certain activities Virgin Mobile Australia intends to undertake in the telecommunications space. A cheque for \$100 is also enclosed.

A soft copy of the notification has been emailed to adjudication@acc.gov.au.

Please do not hesitate to contact the undersigned if you need to discuss any matters arising.

Yours sincerely,

  
**Marcus Bourget**  
**Corporate Counsel**  
**Virgin Mobile Australia**



# Form G

Commonwealth of Australia

*Trade Practices Act 1974 - Sub-section 93(1)*

## NOTIFICATION OF EXCLUSIVE DEALING

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 subsections 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of person giving notice  
(Refer to direction 2)

**Virgin Mobile (Australia) Pty Limited (ABN 67 092 726 442) (Mobile)**

N93245

- (b) Short description of business carried on by that person:  
(Refer to direction 3)

**VMA conducts the business of supplying mobile telecommunication and internet access services.**

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

**Virgin Mobile (Australia) Pty Limited, Level 8, 213 Miller Street, North Sydney, NSW 2060**

### 2. Notified arrangement

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

**This notice relates to the provision of the following post-paid 24 month mobile telecommunication plans offered by Mobile.**

Plan	Minimum Commitment
\$20 Cap Plan	\$480
\$30 Cap Plan	\$720
\$45 Cap Plan	\$1080
\$65 Cap Plan	\$1560

- (b) Description of the conduct or proposed conduct:  
(Refer to direction 4)

**Mobile proposes to offer existing customers of Virgin Money (Australia) Pty Limited (ABN 75 103 478 897) (Money) a \$100 Myer Voucher when the customers connects to a 24 month post-paid mobile plan. The offer remains valid until 29 February 2008. The gift card is only available on the above plans (although the advertising will feature the \$20 Cap Plan only) with either a Nokia 6300 or Nokia 6131 handset.**

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:  
(Refer to direction 5)

**The class of persons to whom the conduct relates are the existing customer base of Money who acquire mobile telecommunication services from Mobile.**

- (b) Number of those persons:

- (i) At present time:

**The offer will be made to approximately 750,000 customers of Money. Money's total customer base is approximately 800,000.**

- (ii) Estimated within the next year:  
(Refer to direction 6)

**Not relevant.**

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

**Not relevant.**

4. **Public benefit claims**

- (a) Arguments in support of notification:  
*(Refer to direction 7)*

**Mobile wishes to enhance its competitive position in that part of the telecommunications market that deals with mobile telephone services. Specifically, it has developed this initiative to make its mobile telecommunication services attractive to customers. The proposed arrangement provides a benefit to:**

- **Customers of Money by offering a \$100 gift card**
- **Customers generally, in the context of increased competition in the market which Mobile operates; the telecommunications industry.**

- (b) Facts and evidence relied upon in support of these claims:

**Customers, who take up the offer, will receive a bundle of handset and cap plan which is commensurate with a minimum total commitment as follows.**

<b>Plan</b>	<b>Minimum Commitment</b>	<b>Gift with purchase</b>
<b>\$20 Cap Plan</b>	<b>\$480</b>	<b>\$100 Myer Gift Card</b>
<b>\$30 Cap Plan</b>	<b>\$720</b>	<b>\$100 Myer Gift Card</b>
<b>\$45 Cap Plan</b>	<b>\$1080</b>	<b>\$100 Myer Gift Card</b>
<b>\$65 Cap Plan</b>	<b>\$1560</b>	<b>\$100 Myer Gift Card</b>

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 8)*

**In broad terms the market which the proposed offer is likely to affect is the market for the provision of mobile telecommunication services to customers.**

**There are five main providers of mobile telecommunication services - Telstra, Optus, Vodafone, 3 and Virgin Mobile. Each provider offers a variety of different mobile telecommunication offers and plans to the consumer and business markets in a highly competitive environment. This is the case, even though Money and Optus Mobile Pty Ltd are wholly owned subsidiaries of Singtel Optus Pty Ltd.**

6. **Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:  
*(Refer to direction 9)*

**Mobile does not believe there will be any public detriment resulting from the notification.**

(b) Facts and evidence relevant to these detriments:

**Although the conduct described in Form G may be exclusive dealing conduct within section 47 of the Act, Mobile holds the view that the proposed conduct will have a negligible effect on competition in the market noted above because:**

**In Australia there are five main providers of local and long distance telephony, mobile and internet services to business customers - Telstra, Optus, Vodafone, 3 and Virgin Mobile; they all compete vigorously for customers. Consequently, competitive packages are available to the public in respect of mobile services at any given time.**

**Money members are not required to take up any Mobile services;**

**Money members and other customers remain free to acquire mobile services and products discounts via other promotions offered by other suppliers;**

**The proposed conduct is not anti-competitive. Mobile is of the view that its own competitive position can be enhanced by the offer of mobile services to customers of Money.**


7. **Further information**

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notifications:

**Marcus Bourget, Corporate Counsel, Virgin Mobile (Australia) Pty Limited, Level 8, 213 Miller Street, North Sydney, NSW 2060**

Dated 14/12/2007.....

Signed by/on behalf of the applicant



Marcus Bourget

Corporate Counsel

Virgin Mobile Australia

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

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