

BLAKE DAWSON WALDRON

L A W Y E R S

Australian Competition and Consumer Commission
Adjudication Branch
Level 3
500 Queen Street
BRISBANE QLD 4000

Dear Sir/Madam

Form G Notification of Exclusive Dealing Conduct

We act for Telstra Corporation Limited (**Telstra**) and enclose a form G Notification of Third Line Forcing Conduct on Telstra's behalf.

We also enclose a cheque in the amount of \$100.00 for the filing fee.

If you have any queries, please do not hesitate to contact David Wenck on (07) 3259 7219 or Lina Hughes on (07) 3259 7057.

Yours faithfully



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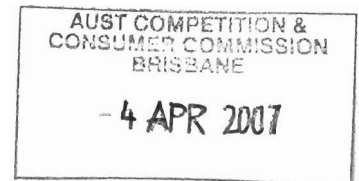
Our reference

DJW LHU 07 1413 4031

4 April 2007

BRISBANE
SYDNEY
MELBOURNE
PERTH
CANBERRA
PORT MORESBY
SHANGHAI

Associated Office
JAKARTA



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Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to 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)

N92885

Telstra Corporation Limited ABN 33 051 775 556 ("Telstra").

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

Telstra is a telecommunications and information services company.

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

C/- David Wenck
Partner
Blake Dawson Waldron
Level 36, Riverside Centre
123 Eagle Street, Brisbane, QLD 4000

2. Notified arrangement

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

This notification relates to the supply of:

- (i) an entry into trade promotion lotteries conducted by Telstra; and
(ii) provision of "gift with purchase" items by Telstra, namely Adelaide Crows' merchandise,
to members of the Adelaide Football Club.

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

In 2007, Telstra proposes to:

- (a) supply or offer to supply entry into trade promotion lotteries, (arguably, allowing entry into a trade promotion lottery constitutes the supply of a service for the purpose of the Act), to customers who have purchased eligible Telstra goods or services (**products**), on the condition that the customer will acquire or agrees to acquire membership in the Adelaide Football Club (a service provided by the Adelaide Football Club); or
- (b) refuse to allow entry into trade promotion lotteries upon purchase of eligible Telstra products, for the reason that the customer had not acquired or agreed to acquire membership in the Adelaide Football Club.

Telstra also proposes to:

- (a) supply or offer to supply a gift with purchase item (arguably, provision of a good itself or the provision of a discount, allowance, rebate or credit on the supply of Telstra products) to customers who have purchased eligible Telstra products, on the condition the customer will acquire or agrees to acquire membership in the Adelaide Football Club or
- (b) refuse to supply a gift with purchase item upon purchase of eligible Telstra products, for the reason that the customer had not acquired or agreed to acquire membership in the Adelaide Football Club, (**Proposed Conduct**).

It is arguable, although not necessarily accepted, that the Proposed Conduct may constitute the conduct proscribed by subsections 47(6) or 47(7).

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)

These may be two classes of persons to which the conduct relates:

- (a) consumers who participate in trade promotions lotteries or who are interested in receiving gift with purchase items upon purchase of eligible Telstra products (**Category A**); and
- (b) Adelaide Football Club members (**Category B**).

(b) Number of those persons:

(i) At present time:

Category A - unknown

Category B – 37,000

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

Category A - unknown

Category B - unknown

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

Not applicable.

4. Public benefit claims

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

It is submitted that the net public benefit of the Promotions will outweigh possible detriments. Public benefits include:

- The Promotions provide consumers with the enjoyment of participation in trade promotion lotteries and the opportunity to receive bonus gifts and possibly receipt of prizes in conjunction with a consumer's purchase of a standard Telstra product.
- The Promotion may assist promoting the Adelaide Football Club and provide value in being a member of that club.
- The decision by a consumer as to whether to participate in the Promotions is a voluntary decision. Since the Promotions are to be marketed to persons who are already members of the Adelaide Football Club, these customers do not have to purchase any additional product from a third party in order to participate. It is possible that some persons who are not already members of the Adelaide Football Club might wish to join, in order to take advantage of the Promotions, but this is considered an unlikely incentive. Rather the Promotions are focussed on providing "bonus" gifts and chances to win. This conduct is generally beneficial to consumers.
- Telstra conducts many other trade promotion lotteries and provides "gift with purchases" throughout Australia where participation is available to other persons.
- Consumers benefit from receipt of bonus gifts and possibly winning prizes.
- Other telecommunications and information services suppliers are free to conduct offers similar to the Promotions and indeed the Promotions may stimulate competition in this regard.

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

See above.

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)

The market is potentially Australia-wide but limited to those who (a) purchase telecommunications and information services products in the various markets in which those products are supplied; and (b) would be interested in receiving gift with purchase items or entering trade promotion lotteries. As the Promotions are limited to those potential acquirers of the Telstra products who are already members of the Adelaide Football Club (or who are prepared to become members), the affected segment of the relevant market(s) is relatively very small.

The markets for the provision of telephony and associated services in Australia are highly competitive. At any given time there is a large number of competitive offers available to the public, either in specified segments, such as with the Proposed Conduct, or available to the public generally.

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)

It is submitted a potential detriment is that not all consumers will be able to participate in the Promotions. This detriment is balanced by the fact that Telstra conducts a wide number of trade promotion lotteries and other special offers directed at various segments of the Australian public.

The Proposed Conduct is unlikely to have any significant effect on competition. Other companies do, and are free to, conduct special offers such as the Promotions. The Proposed Conduct will only appeal to that proportion of customers in the market for the relevant telephony and information services products, who are already members of the Adelaide Football Club, or who are likely to already be interested in joining the Adelaide Football Club.

(b) Facts and evidence relevant to these detriments:

See above.

7. Further information

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

David Wenck
Partner
Blake Dawson Waldron
PO Box 7074, Riverside Centre
Brisbane QLD 4001
Ph: (07) 3259 7219

Dated *M.* 4 April 2007

Signed ~~by~~ on behalf of the applicant



(Signature)

David Reginald John Wenck

(Full Name)

Blake Dawson Waldron Lawyers

(Organisation)

Partner

(Position in Organisation)

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 the 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