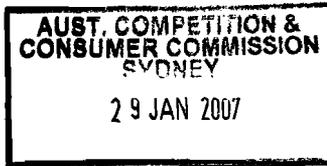


Partner Simon Snow
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ssnow@gtlaw.com.au
Our ref SHS:1000973



LAWYERS

29 January 2007

By hand

Scott Gregson
General Manager, Adjudication
Australian Competition & Consumer Commission
C/- Level 7
Angel Place
123 Pitt Street
SYDNEY NSW 2000

FILE No:
DOC:
MARS/PRISM:

Gilbert + Tobin

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Sydney NSW 2001
Australia

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Dear Mr Gregson

Notification under section 93(1) of the Trade Practices Act

Please find enclosed notifications on behalf of ninemsn Pty Limited (**ninemsn**) and ACP Magazines Limited (**ACP Magazines**) under s 93(1) of the *Trade Practices Act* 1974.

We enclose a cheque in the amount of \$300, being the required filing fee on the following basis:

- the primary applicant is ninemsn, requiring a filing fee of \$100; and
- ACP Magazines is filing an additional notification attracting the concessional filing fee of \$200 since it relates to conduct in the same market (or closely related markets).

Ninemsn and ACP Magazines (**Notifying Parties**) claim confidentiality over the information set out in Confidential Schedule 1 to the notification, on the grounds that the information disclosed therein is commercially sensitive. The Notifying Parties therefore request that the information in Confidential Schedule 1 not appear on the public register.

Please do not hesitate to contact me if you would like to discuss the Notifying Parties' claim for confidentiality or any other aspect of this notification.

Yours sincerely,

Simon Snow
Partner
T +61 2 9263 4246
ssnow@gtlaw.com.au

FORM G

Regulation 9

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 sub-section 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person(s) giving notice:

ninemsn Pty Limited (ninemsn) N92783

ACP Magazines Limited (ACP) N92784

(together, the **Notifying Parties**)

(b) Short description of business carried on by that person:

ninemsn: online and mobile publishing, including the supply of advertising and promotional services.

ACP: magazine publishing and distribution, including the supply of advertising and promotional services.

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

Simon Snow
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney NSW 2000

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

The supply of advertising and promotional services and related services.

(b) Description of the conduct or proposed conduct:

See Attachment A.

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

Advertisers who acquire, will acquire or will be offered advertising and promotional services and related services provided by ACP and ninemsn.

(b) Number of those persons:

(i) At present time: unknown, but substantially greater than 50.

(ii) Estimated within the next year: unknown, but substantially greater than 50.

(c) Where number or classes 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

Simon Snow
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney NSW 2000

Date: 29 January 2007

Signed on behalf of the applicant giving notice:



.....
Simon Snow
Partner
Gilbert + Tobin

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.

ATTACHMENT A

1 Proposed conduct

Both of the Notifying Parties propose to offer to supply advertising and/or promotional services to customers at a discount off the rates at which they would otherwise offer such services (**Bundle Discount**) on the condition that the customer also acquires advertising and/or promotional services from the other Notifying Party.

The maximum Bundle Discount that any of the Notifying Parties propose to offer is [see Confidential Schedule 1].

The Notifying Parties may refuse to offer the Bundle Discount to customers who do not agree to acquire advertising and/or promotional services from the other Notifying Party.

There is an argument (not necessarily accepted by the Notifying Parties) that the proposed conduct (**Proposed Conduct**) may amount to a contravention of s 47(6) and s 47(7) of the *Trade Practices Act 1974* (Cth) (**Act**).

2 Public benefit and competition issues

For the reasons noted below, the impact of the Proposed Conduct is not such that, under the test laid down in s 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by the likely detriment to the public.

2.1 Public benefits for customers, potential customers and the industry

The Proposed Conduct will provide advertisers with the benefit of the Bundle Discount, thereby reducing the cost to those advertisers of acquiring the advertising services. It is anticipated that at least part of such savings are likely to be passed on to consumers of the goods and/or services supplied by those advertisers.

Further, it is expected that the Proposed Conduct will also promote a competitive response from other providers of advertising services.

2.2 Public detriment

There will be no public detriment resulting from the Proposed Conduct.

There will be no lessening of competition as a result of the Proposed Conduct. Advertising and promotional services are supplied under highly competitive conditions and ACP and ninemsn are but 2 of a large number of competing suppliers.

Advertisers will remain free to acquire advertising and promotional services from ACP and ninemsn on an unbundled basis or to acquire such services from other suppliers.

2.3 Conclusion

Due to the public benefits that will flow from the Proposed Conduct and the absence of any public detriment, the Notifying Parties request that the Commission allow the notification to stand.

Confidential Schedule 1

**EXCLUDED FROM
PUBLIC REGISTER**