

FILE No:
DOC
MARS/PRISM:

middletons

Melbourne | Sydney

13 June 2008

Our reference
LEDG.MDEA.10013042

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sirs

Notification of third line forcing


We act for Vodafone Pty Limited.

We enclose a notification in accordance with section 93 of the *Trade Practices Act 1974*.

We also enclose a cheque for \$100 for payment of the lodgement fee.

Please do not hesitate to contact me should you have any questions in relation to this notification.

Yours faithfully



Murray Deakin
Partner



Locked Bag 1
Royal Exchange NSW
1225
DX 170 Sydney
www.middletons.com

Level 26
52 Martin Place
Sydney NSW 2000
Australia
telephone: +61 2 9513 2300
facsimile: +61 2 9513 2399

Partner
Murray Deakin
telephone: +61 2 9513 2335
murray.deakin@middletons.com

Contact
Lynsey Edgar
telephone: +61 2 9513 2423
lynsey.edgar@middletons.com

syddocs 1947325v1 LEDG

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)

N93443 Vodafone Pty Limited (ACN 062 954 554) (**Vodafone**)

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

Vodafone is a telecommunications company that supplies telecommunications goods and services.

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

Murray Deakin
Middletons
Level 26, 52 Martin Place
SYDNEY NSW 2000

2. Notified arrangement

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

The supply or acquisition of:

- (i) a telecommunications device (including but not limited to mobile handsets, laptops, computer terminals and other devices) (**Device**); and
(ii) telecommunications services.

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

See Attachment A.

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)

Persons who acquire, or will acquire, Vodafone telecommunications services and/or Devices.

- (b) Number of those persons:
(Refer to direction 6)

(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 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)

See Attachment A.

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

See Attachment A.

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)

See Attachment A.

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)

See Attachment A.

- (b) Facts and evidence relevant to these detriments:

See Attachment A.


7. Further information

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

Murray Deakin
Middletons
Level 26, 52 Martin Place
SYDNEY NSW 2000
T: +61 2 9513 2335

Dated 13 June 2008

Signed on behalf of the applicant


.....
Murray Deakin
Middletons
Partner

Directions

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.

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.

Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

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.

Describe the business or consumers likely to be affected by the conduct.

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.

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.

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.

Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ATTACHMENT A

Proposed conduct

1. Vodafone proposes to develop, support and promote over time a range of product promotions with its authorised dealers to promote the sale of Vodafone goods and services.
2. These product promotions will be organised between Vodafone and dealers which are authorised by Vodafone to sell Vodafone goods and services (**Vodafone Authorised Dealers**).
3. Under these product promotions, Vodafone Authorised Dealers and/or Vodafone will from time to time offer customers a financial benefit in respect of the effective price payable for:
 - (a) a particular Device; or
 - (b) telecommunications services,on the condition that the customer enters into, or renews, a service contract with Vodafone in respect of the provision of telecommunication services and purchases the Device from a Vodafone Authorised Dealer.
4. The financial benefit will be made available to participating customers in the form of a discount, allowance, rebate or credit in relation to the supply of the particular Device and/or telecommunications services which are the subject of the product promotion. The specific details of the financial benefit to be offered to customers will be specified in the promotional material developed to support the particular product promotion and will be available from Vodafone Authorised Dealers participating in the promotion. These details will include:
 - (a) the particular Device to which the relevant promotion relates;
 - (b) the Vodafone telecommunications services to be provided, including the terms and conditions of those services; and
 - (c) the period for which the particular promotion will be available.
5. By way of example, a product promotion would include, but would not be limited to:
 - (a) Vodafone Authorised Dealers offering a discount on a particular laptop computer to customers who connect to a 24 month 5GB Data Bundle with Vodafone; or
 - (b) Vodafone waiving two months access fee on a 24 month 1GB Data Bundle to customers who purchase a laptop computer from a Vodafone Authorised Dealer.

Public benefit claims

8. The proposed conduct will be of benefit to the public because:
 - (a) Customers who participate in any of the product promotions will obtain a genuine financial benefit in the form of a discount, allowance, rebate or credit in relation to a Device or telecommunications services.
 - (b) Each of the product promotions will aim to combine innovative combinations of technology and telecommunications services for the benefit of customers.
 - (c) The promotion of these product promotions is likely to stimulate competition in the relevant markets by encouraging competitors of Vodafone and competitors of Vodafone Authorised Dealers to offer similar promotional discounts.

- (d) This further competition is likely to encourage Vodafone and its competitors to continuously improve their respective product promotions, thereby generating positive consumer benefits.

Public detriment

- 9. Vodafone does not consider that the proposed conduct would cause any detriment to customers or the public because:
 - (a) Customers will be free to acquire telecommunications services from Vodafone without any obligation to purchase a Device.
 - (b) Customers will be free to acquire a Device at normal prices (or other discounted prices made available by the Vodafone Authorised Dealer or other resellers) without any obligation to acquire telecommunications services from Vodafone.
 - (c) Customers can continue to make normal purchasing decisions based on price and quality.

Market definition

- 10. The relevant markets are:
 - (a) the markets for the acquisition of Devices; and
 - (b) the markets for the acquisition of telecommunication services.
- 11. Competition in these markets is vigorous and there are many suppliers in the markets which can and do provide interchangeable and substitutable goods and services. Telecommunication service providers, in particular, compete by offering product promotions which offer a range of financial benefits associated with the sale of either Devices or services.
- 12. There are numerous choices available to potential purchasers of Devices and telecommunication services, with different suppliers offering a variety of prices, features and benefits, including promotions which package Devices and telecommunication services. These bundling arrangements do not lessen, but facilitate, competition in the relevant markets.