

25 August 2008

CONFIDENTIAL

Our reference  
MDEA.10013042

**BY COURIER**

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2600

Dear Sir

**Notification of third line forcing**

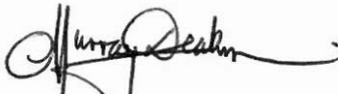
We act for Vodafone Pty Limited.

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

We also enclose a cheque for \$100 in 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

encl.

## 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)*

N93560 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 of mobile telecommunications goods and 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 goods or services.

- (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.

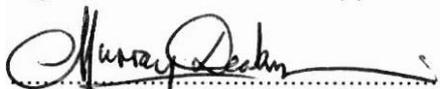
**7. Further information**

- (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 25 August 2008

Signed on behalf of the applicant



Murray Deakin  
Middletons  
Partner

**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.

## Attachment A

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### Background

1. Customers who acquire certain mobile telecommunication services (**Services**) from Vodafone can acquire those Services on a prepay or postpaid basis. Customers can pay for these Services through a range of methods, including online or on-mobile by direct debit or credit card, or in person at retail outlets.
2. Vodafone intends to enter into an agreement with PayPal Australia Pty Ltd (**PayPal**) which will allow customers to pay for Services online or on-mobile using PayPal, thereby providing an additional and alternative method of payment.
3. When introducing this new payment method to its customers, Vodafone intends to implement 2 general types of promotions.

### Proposed conduct

4. Vodafone proposes to implement the following 2 promotions (**Promotions**):
  - (a) To offer customers a discount or benefit when the customer purchases Services on condition that:
    - (i) the customer purchases the Services online or on-mobile; and
    - (ii) the customer purchases the Services through PayPal.
  - (b) To offer customers a discount or benefit when the customer purchases Services on the condition that:
    - (i) the customer has (or will obtain) a PayPal account; and
    - (ii) the customer purchases the Services through PayPal, either online or on-mobile.

Conversely, Vodafone may refuse to make available the abovementioned discount or benefit the subject of the Promotions to any customer who elects not to purchase the Services online or on-mobile using the payment methods specified.

5. In both types of Promotions, the customer will be offered a discount or benefit. The discount or benefit could be, for example, an allowance to send extra text messages at no additional cost or a discount off the purchase price of the Services or an increase in the value of the Services purchased at reduced or no additional cost or entry into a competition. By way of example, either Promotion might state "Click here to purchase the Vodafone 511 Prepay Pack for just \$49 (\$30 off RRP using online redemption)".
6. The details of each Promotion will be specified in the relevant promotional material, and will include:
  - (a) the specific discount or benefit to be offered to the customer;

- (b) the period for which the particular Promotion will be available; and
  - (c) the Services and product to which the relevant Promotion relates.
7. The second type of Promotion (as described in paragraph 4(b)) will be offered to customers in PayPal newsletters. In exchange for this promotion, PayPal is providing marketing opportunities to Vodafone in PayPal newsletters.

### **Public benefit claims**

8. The proposed conduct will be of benefit to the public because:
- (a) Customers who participate in the Promotions will obtain:
    - (i) a genuine financial benefit in the form of a discount, allowance, rebate or credit in relation to the Services or a product sold with the Services; or
    - (ii) additional telecommunications services such as text messages at discounted or no additional cost.
  - (b) Consumer choice is improved and increased. Customers will be provided with increased access to competitively priced telecommunications services. However, the customer's ability to choose and compare other telecommunications services is not restricted.
  - (c) The Promotions are likely to stimulate competition in the relevant markets by encouraging competitors of Vodafone 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. The condition to use PayPal to effect payment in the online or on-mobile environment does not impose a material restriction upon any customer, as other means of electronic payments, including via direct credit card remain open to customers to use.
10. 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 the Services at normal prices through retail outlets or online via direct credit card without any obligation to acquire services from PayPal.
  - (b) Customers are not compelled to take part in either of the Promotions and may acquire the Services by the same payment means that were available prior to the introduction of the Promotions.
  - (c) Customers are not compelled to take part in either of the Promotions and may acquire similar telecommunications services from other providers.
  - (d) Sufficient information about the Promotions will be made available in order for customers to make an informed decision and choice.
  - (e) Customers can continue to make normal purchasing decisions based on price and quality.

**Market definition**

11. The relevant market is the market for the acquisition of telecommunications goods and services.
12. Competition in this market is vigorous and there are many suppliers in the market which can and do provide interchangeable and substitutable goods and services. Telecommunications service providers, in particular, compete by offering product promotions which offer a range of benefits associated with the sale of goods and services.
13. There are numerous choices available to potential purchasers of telecommunication services, with different suppliers offering a variety of prices, features and benefits. These arrangements do not lessen, but facilitate, competition in the relevant markets.

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