

PUBLIC VERSION

**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)

N94104

Nine Network Australia Pty Limited (NNA)

N94105

(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.

NNA: commercial free-to-air television broadcasting, including the supply of advertising and promotional services.

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

for ninemsn:

General Counsel  
ninemsn Pty Ltd  
Level 7, Tower Building  
Australia square  
264 George Street  
Sydney NSW 2000

for NNA:

General Counsel  
Nine Network Australia Pty Limited  
24 Artarmon Road  
Willoughby NSW 2068

**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 NNA 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. Public Benefit Claims**

See Attachment A.

**5. Market Definition**

The market or markets in which the supply of advertising and promotional services occurs.

**6. Public Detriments**

See Attachment A.

**7. Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification**

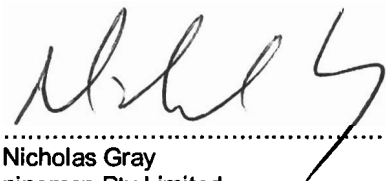
for ninemsn:

General Counsel  
ninemsn Pty Ltd  
Level 7, Tower Building  
Australia square  
264 George Street  
Sydney NSW 2000

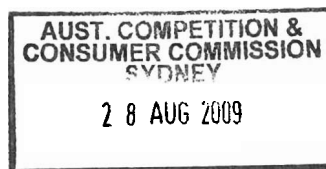
for NNA:

James Talbot  
Corporate Counsel  
Nine Network Australia Pty Limited  
PO Box 27  
Willoughby 2068  
Ph: 9965 2725

Signed on behalf of the applicant giving notice:



.....  
Nicholas Gray  
ninemsn Pty Limited  
Chief Financial Officer and Head of Strategy



.....  
Peter Wiltshire  
Nine Network Australia Pty Limited  
Director of Sales and Marketing

## **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 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

### 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 across a wide range of media including both pay and free-to-air TV, print media, online media and cinema and outdoor advertising. NNA and ninemsn are but two of a large number of competing suppliers of advertising and promotional services.

Advertisers will remain free to acquire advertising and promotional services from NNA 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.