

21 December 2008

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

Dear General Manager

Notification of exclusive dealing
1300 Plumber Pty Ltd
Our ref 1286

We enclose by way of filing:

1. Form G Notification of Exclusive Dealing; and
2. A cheque for \$100.00 made payable to ACCC being the fee payable on lodging the Notification.

Can you please confirm receipt of the enclosed.

Yours faithfully



Shanti Rubens
Director

Mobile 0403 245 642 | shanti@rubens.com.au



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)

1300 Plumber Pty Ltd ABN 56 130 176 779 N93736

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

The Applicant owns the smartnumber, 1300 PLUMBER or 1300 758 6237 (**Designated Smartnumber**) and operates a service that allows consumers to contact a plumber in their local area by phoning the Designated Smartnumber and selecting their postcode. The call is then diverted to the plumber using an automated call routing system.

The Applicant licences its customers, individual plumbers, with the right to have calls to the Designated Smartnumber diverted to the plumber's designated telephone number.

This is referred to as a "**Shared Smartnumber Service**" in that the use of a single 1300 phone number, the Designated Smartnumber, is shared between the various plumbers/customers who operate independent plumbing businesses.

Both the Applicant and its customers promote the use of the Designated Smartnumber.

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

Unit 1/660 Old Calder Highway, Keilor, VIC 3036
Fax: 1300 428 543

2. Notified arrangement

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

The supply by the Applicant of a Shared Smartnumber Service (as referred to above).

And, the supply by a “Carrier” or “Carriage Service Provider” (within the meaning of the *Telecommunications Act 1997*) (“**Telco Provider**”) of inbound calls to the Applicant’s Designated Smartnumber.

- (b) Description of the conduct or proposed conduct:

The Applicant proposes to supply a Shared Smartnumber Service to its customers. The service will be supplied in conjunction with a Telco Provider.

It is not possible for the Applicant to provide the service without using the services of a Telco Provider. Its services are required for the following functions (“**Telco Functions**”):

- (i) hosting the Smartnumber.
- (ii) providing an automated call routing system or interactive voice response system (the “**Routing System**”) which will receive calls made to the Designated Smartnumber and automatically divert them to a customer/plumber’s phone number based on the postcode selected by the caller.
- (iii) providing carriage of calls to the Designated Smartnumber and calls diverted from the Designated Smartnumber to the plumber’s phone number.
- (iv) billing calls in two parts: first, for calls to the Designated Smartnumber (which are billed to the Applicant); and second, for the segment of calls diverted from the Designated Smartnumber to each plumber’s phone number (which may be billed directly to the plumber).

The Applicant performs other functions required for the business including maintaining ownership of the Designated Smartnumber, marketing the Shared Smartnumber Service to plumbers and their potential customers, managing the data on the Routing System (such as the addition of new customers or requests for changes) and managing the general operations of the business.

In order for the plumbers to be billed for their use of the Shared Smartnumber Service, and in particular for the segment of calls diverted from Smartnumber to each plumber, it is necessary for all of the

plumbers/customers to have an agreement with the Telco Provider who provides the Telco Functions.

The Applicant has therefore entered into an agreement with and, proposes to require its customers to enter into an agreement with, a particular Telco Provider as nominated by the Applicant ("**Nominated Telco**").

The service is sold as a "bundle" such that the Applicant's customers cannot access the Shared Smartnumber Service unless they enter into an agreement with both the Applicant and the Nominated Telco.

Specifically, the Applicant's agreement ("**Member Agreement**") with each customer (referred to as a "**Member**") requires that the Member also enter into an agreement with the Nominated Telco for the carriage of inbound calls. That is, for the carriage of calls diverted from the Routing System to the Member.

The relevant provisions of the Member Agreement are set out below:

Telco Agreement

In order to access our Transfer Service, you must enter into a Telco Agreement with our Nominated Telco so that calls can be transferred from the System to Your Number. At present, Dodo is the Nominated Telco. However, we may change the Nominated Telco from time to time by giving you written notice in which case you must enter into an agreement with the new Nominated Telco on the date stipulated by us. If you fail to do so, you will not be able to receive calls to Your Number from callers to the Plumber Number. We will endeavour to give you at least 30 days notice, if possible, before we change the Nominated Telco.

Definitions

"Dodo" means Dodo Australia Pty Ltd ACN 097 636 970.

"Nominated Telco" means a "Carrier" or "Carriage Service Provider" (within the meaning of the Telecommunications Act 1997) as nominated by us.

"System" means an interactive response system which will receive calls made to the Plumber Number and divert them Your Number if the caller selects Your Postcode.

"Telco Agreement" means an agreement between you and the Nominated Telco for it to provide the carriage of calls diverted from the System to Your Number.

"Transfer Service" means a service for transferring in-bound calls to the Plumber Number to Your Number using the System.

A copy of the full agreement is attached as Annexure A.

(Refer to direction 4)

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)

The conduct relates only to customers of the Applicant's Shared Smartnumber Service.

That is, individual plumbing businesses who sign up as Members of the Applicant's service.

- (b) Number of those persons:

- (i) At present time:

To date, there are approximately 123 customers/plumbers who will be affected by the notified arrangement.

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

It is expected that a further 400 additional plumbers will become customers within the next year.

The maximum number of customers is limited by the number of postcodes in Australia. Currently, the maximum number of postcodes is 2600.

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

Not applicable as there are more than 50.

4. Public benefit claims

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

Service can only be delivered through a single Telco Provider

As indicated above at paragraph 2(b), the only way that the Applicant can deliver a practical Shared Smartnumber Service is by partnering with a Telco Provider.

If the Applicant were to provide the service without requiring the Member to enter into an agreement with a Nominated Telco, the Applicant would need to absorb all of the Nominated Telco's charges including the call charges for inbound call to individual plumbers.

By separating the service provision between the Nominated Telco and the Applicant, it creates more flexible billing arrangements and allows for the Nominated Telco to charge the Member directly for calls diverted to the Member's telephone number. Effectively, this allows for user-pays pricing where each Member pays based on the number of calls the Member receives. It would not be administratively possible for the Applicant to price and bill the service in this manner as it is made possible by the direct agreement between the Member and the Nominated Telco.

Separation of business functions allows additional entrants to the market

The notified conduct allows for businesses other than Telco Providers to provide a Shared Smartnumber Service by partnering with a Telco Provider. In other words, this means the Shared Smartnumber Service can be provided by splitting up the functions of the business between the Telco Provider and the business operator.

By contrast, if the notified conduct were not permitted, it would effectively mean that Telco Providers would be in a stronger position to provide a Shared Smartnumber Service than anyone else and it would thereby restrict competition in the marketplace.

Provision of a new service

The notified conduct facilitates provision of a new service. As far as the Applicant is aware, at this time, no other businesses are offering a similar Shared Smartnumber Service to individual customers where the customer pays the inbound call charges for each call received.

It is unlikely that Telco Providers would supply a Shared Smartnumber Service to individual businesses as it is outside of their core business.

By allowing the notified conduct, and in particular for an Applicant to partner with a Nominated Telco, it will facilitate the provision of a new service.

Shared Smartnumbers offer a substitute to exclusive Smartnumbers

Shared Smartnumber Services may increase competition in the market for Smartnumbers. This may occur because Smartnumber consumers will have the option of purchasing their own Smartnumber for their exclusive use or utilising the services of the Applicant or similar operators who facilitate the shared use of Smartnumbers. That is, a plumber could purchase his own 1300 number for exclusive use throughout Australia or purchase from the

Applicant the right to use the Designated Smartnumber to receive calls from customers in the plumber's geographical area.

Thus, by allowing for a service which offers a substitute to conventional, single-use Smartnumbers it may encourage providers of such single-use Smartnumbers to deliver a more competitive offering.

The costs are shared and purchasing power aggregated

Providers of shared-use Smartnumbers may compete effectively with providers of single-use Smartnumbers by offering use of a Smartnumber to a number of plumbers (e.g. one per postcode) rather than a single user and spread the costs over the various users.

The costs associated with use of a Smartnumber and the opportunity for such costs to be reduced by a shared use model are set out below:

- (i) There are costs of purchasing Smartnumbers which range from \$500 to \$1 million dollars, depending on the particular number. These costs can only be spread over the various users with a shared-use model.
- (ii) There is a fixed cost of a Telco Provider hosting the Smartnumber. Again, this cost can only be spread over the various users with a shared-use model.
- (iii) The hosting Telco Provider will charge for in-bound calls to a Smartnumber. By aggregating the purchasing power of the various users of the Smartnumber, the Applicant is in a position to negotiate more favourable call rates with the Telco Provider for the benefit of the Members.
- (iv) There are costs associated with marketing the Smartnumber to the plumbers' prospective customers. These costs can be spread over the various users by all Members using one set of marketing material and the Members benefiting from the promotion of one Smartnumber.

The Members may directly or indirectly benefit from these cost savings.

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

Evidence relating to the range of costs of Smartnumbers can be found at <http://www.smartnumbers.com.au/smartnumbers/action/auctions>

By contrast, the amounts charged by the Applicant for shared use of the Designated Smartnumber will be in the range of \$49 - \$259 per month.

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 for Smartnumbers

The Applicant operates in the Smartnumbers market. There is a well established market for Smartnumbers (13, 1300 and 1800 numbers) with many providers offering these numbers for purchase or use under licence for a set time period. These numbers may also be purchased at auction.

The Designated Smartnumber is merely one of the many available numbers and could be substituted by use of another Smartnumber.

The market for business referrals

The Applicant also offers the additional service of providing business referrals. There are a significant number of other businesses providing referrals for plumbers. These include, for example, Yellow Pages, (www.yellowpages.com.au), Service Central (www.servicecentral.com.au) and OzPlumbers (www.ozplumbers.com.au). Alternatively, plumbers may use other methods for marketing themselves.

The market for a Shared Smartnumber Service where call recipient charged

If the market in which the Applicant operates is very narrowly defined, it may be regarded as the market for a Shared Smartnumber Service where the call recipient is charged for inbound calls.

There are significant compliance obligations which would restrict the players in this market to Telco Providers if the notified conduct were prohibited. By allowing other players, such as the Applicant, to operate in this market in conjunction with a Telco Provider, the barriers to entry are significantly reduced or removed altogether.

While the Applicant is not aware of any other players operating in this market, it is anticipated that others will follow the Applicant into the market.

Other affected markets including significant acquirers

The notified conduct is not likely to have an affect on any significant acquirers. There are many substitutable services available in the markets in which the Shared Smartnumber Service operates. The Applicant's customers may therefore acquire similar services from other providers.

The Applicant's customers will only be restricted in their choice of supplier of inbound calls to the Designated Smartnumber Service. They may use any other Telco Providers for their other telecommunications requirements.

Other affected markets including significant suppliers

The notified conduct only relates to a very small number of customers and is not likely to have any substantial affect on the suppliers of inbound call services.

The Applicant itself is free to negotiate with any Telco Provider on the terms on which the Telco Provider will provide part of the service to the Applicant's customers so various suppliers will have an opportunity to compete for the business of the Applicant and its customers each time the Applicant nominates its Telco Provider (which is expected to occur at intervals of 1 to 3 years).

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)

There are no apparent detriments to the public from the notified conduct.

The notified conduct is likely to reduce the price of a Shared Smartnumber Service as it allows the provider of the Shared Smartnumber Service to break down the charges for the service and for inbound calls to be charged separately by the Telco Provider rather than the Applicant charging all of its customers a fixed fee that would included the estimated inbound call costs.

If the notified conduct is permitted, it will allow businesses other than Telco Providers to provide a Shared Smartnumber Service (by partnering with a Telco Provider) which is in turn likely to increase competition and promote price reductions and improved services.

Alternatively, if the notified conduct were prohibited, it may restrict or completely impede the ability of businesses other than Telco Providers from providing a Shared Smartnumber Service.

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

No evidence is available.

7. Further information

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

Primary contact:

Matthew Bridges
1300 Plumber Pty Ltd
30 Akma Court
TAYLORS LAKES VIC 3038
matthew@dialaword.com.au
0438 624 638

Secondary contact:

Shanti Rubens
Director | Rubens Legal
Suite 1, 11 Beach Street, Port Melbourne VIC 3207
Mobile 0403 245 642 | Tel 61 3 9245 5000 | Fax 61 3 8640 0867

Dated.....

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(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.

EXCLUDED FROM
PUBLIC REGISTER

Annexure A