



27 April 2009

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

FILE No:

DOC:

MARS/PRISM:

Dear Sir or Madam

Form G Notification of Exclusive Dealing – subsection 93(1) Trade Practices Act 1974 (Cth)

AUSTAR Entertainment Pty Ltd (ABN 93 068 104 530) (AUSTAR) proposes to offer a discount on the AUSTAR subscription TV service to eligible customers who obtain a home loan from Commonwealth Bank. A full description of the conduct is outlined in the enclosed Form G exclusive dealing notification.

It is arguable that this arrangement may constitute a technical contravention of section 47 of the *Trade Practices Act 1974 (Cth)*. As a result, we enclose for your consideration:

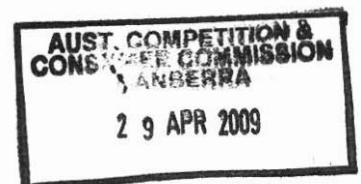
- (a) a Form G notification on behalf of AUSTAR which highlights the public benefit associated with the proposal ; and
- (b) a cheque for \$100 as payment for lodging fees.

If you have any questions in relation to this notification, please contact Alison Shilkin on (02) 9295 0126.

Yours sincerely

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Corporate Counsel

Encs.



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.

1. Applicant

(a) Name of person giving notice:

N93952 AUSTAR Entertainment Pty Ltd (ABN 93 068 104 530) (AUSTAR)

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

AUSTAR is a provider of subscription TV services to customers in regional and rural Australia. AUSTAR also offers internet and mobile telephone services.

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

c/- Alison Shilkin
Legal and Regulatory Counsel
Level 1, 46-52 Mountain Street
Ultimo NSW 2007
Tel: (02) 9295 0126

2. Notified arrangement

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

Subscription TV services.

(b) Description of the conduct or proposed conduct:

AUSTAR proposes to provide customers who obtain a home loan from Commonwealth Bank a discount on their AUSTAR services. Commonwealth Bank sends welcome letters to all new home loan customers which will invite customers to call AUSTAR to obtain the AUSTAR discount if they want to subscribe to the AUSTAR service.

The AUSTAR discount includes:

- a) For new customers that sign up to a 12 month contract and take 4 additional package tiers/options, paying \$0 for the price of their AUSTAR installation.

- b) For new and existing customers, an upgrade to AUSTAR's personal digital recorder ('MyStar') free for a period of 3 months (for existing customers, this includes paying \$0 for price of any upgrade fee).

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:

Customers and potential customers that wish to obtain subscription TV from AUSTAR will be entitled to the discount if they obtain a home loan from Commonwealth Bank.

(b) Number of those persons:

(i) At present time:

AUSTAR currently has approximately 720,000 subscribers. There are 2.4million television households in areas in regional Australia capable of being serviced by AUSTAR.

Commonwealth Bank approves approximately 4000-8000 home loan customers each month across Australia.

(ii) Estimated within the next year:

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 (*including evidence*) in support of notification:

The proposed conduct will result in a public benefit because:

- (i) The offer will provide Commonwealth Bank customers who would like to purchase AUSTAR with a genuine saving on their AUSTAR service than if they were to purchase AUSTAR separately.
- (ii) The discount makes the service more affordable and better value for consumers.
- (iii) The promotion targets Commonwealth Bank customers that are interested in TV viewing and will therefore add value to those particular customers' new home entertainment system.
- (iv) The conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in the services.

In addition, customers are still able to obtain a number of other discounts from AUSTAR for the same or similar services.

Therefore, AUSTAR does not believe that the proposed conduct will lessen competition and considers that the public benefits arising from the proposed conduct clearly outweigh any possible public detriment.

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):

The television market (including both free to air and subscription television) and banking and financial services market in regional and rural Australia.

6. Public detriments

- (a) Detriments (including evidence) 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:**

AUSTAR believes that there are no public detriments associated with the proposed conduct for the following reasons:

- (i) AUSTAR will continue to offer its services to consumers at regular and discounted prices regardless of whether or not the consumers obtain a Commonwealth Bank home loan.
- (ii) Consumers are free to purchase subscription television services from other competing suppliers and are able to receive free to air television at no cost to the consumer.
- (iii) Both industries are highly competitive and so consumers are able to continue to make choices based on the price, value and quality of the services and products offered.
- (iv) The services and goods offered by both AUSTAR and Commonwealth Bank are available for purchase by consumers independent of the promotion.

Conclusion

Given the benefits outlined above, and the lack of any discernible detriment, it is clear that the benefits of the proposed conduct will far outweigh any potential detriment.

7. Further information

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

Alison Shilkin
Legal and Regulatory Counsel
Level 1, 46-52 Mountain Street
Ultimo NSW 2007
Tel: (02) 9295 0126

Dated ²⁷ April 2009

Signed by/on behalf of the applicant


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(Signature)

Alison Shilkin
(Full Name)

AUSTAR Entertainment Pty Ltd
(Organisation)

Legal and Regulatory Counsel
(Person in Organisation)