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16 May 2011

Australian Competition and Consumer Commission
Public Register Office
GPO Box 3131
CANBERRA ACT 2601



Dear Sir/Madam,

Notification by M2 Clear Pty Ltd: s.93(1) of the *Competition and Consumer Act*

We refer to the above mentioned matter.


Please find enclosed:

1. Form G (Notification of Exclusive Dealing) ("**Form G**"); and
2. Cheque for the prescribed fee of \$100.00.

We look forward to hearing from you shortly.

Please contact the writer with any queries.

Yours sincerely



Scott Carter
General Manager
M2 Clear Pty Ltd
encl.

M2 Clear Pty Ltd
ABN 32 148 154 590

P 1300 304 773 | F 1300 365 617 | E billing@cleartelecoms.com.au

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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)

N95411 M2 Clear Pty Ltd (A.C.N. 148 154 590) ("M2")

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

M2 is in the business of offering and/or providing telephony and communications equipment to customers.

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

C/- Scott Carter
General Manager
M2 Clear Pty Ltd
Level 10, 60 City Road
Southbank VIC 3006

2. Notified arrangement

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

Telecommunications goods and services supplied to the Existing Customers (as those terms are defined in cl. 2(b) below) ("Services").

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

M2 has acquired the business assets of Clear Telecoms (Aust) Pty Ltd ("Clear"), including Clear's customer contracts, on 1 February 2011 ("Acquisition").

(i) Transitional – Existing Customers:

A number of customers acquired by M2 in the Acquisition included customers (“**Existing Customers**”) who received monthly call rebates from Clear in respect of their telecommunications services (“**Rebates**”).

M2 proposes to **continue** that arrangement (the “**Existing Arrangement**”) for the Existing Customers in order to preserve, and not unilaterally remove, the benefit of Rebates that those Existing Customers currently receive. That is, M2 will continue to offer Rebates to the Existing Customers until the expiry of the minimum term of the contract between the Existing Customers and M2. Those Rebates will be provided whether or not the Existing Customers remain bound by any third party agreement.

(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 Existing Customers

(b) Number of those persons:

(i) At present time:

In excess of fifty (50)

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

Substantially in excess of fifty (50)

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

N/A

4. Public benefit claims

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

(i) **Existing Customers:**

Under the Existing Arrangement, the Existing Customers will **continue** to receive the Rebates that those Existing Customers received from Clear prior to the Acquisition. M2 is doing no more than preserving the status quo and the reasonable expectation of the Existing Customers to, notwithstanding the Acquisition, continue receiving the Rebates that the Existing Customers received from Clear.

Moreover, many of the Existing Customers are subject to the protections in the *Telecommunications Consumer Protections Code* and this substantially restricts the ability of M2 to unilaterally remove the Rebates. This restriction is discussed in further detail below under clause 5.

Additionally, it is submitted that the Existing Arrangement will promote competition in the relevant market as:

- (A) M2 will continue to provide the Existing Customers with access to cheaper Services, thereby continuing price competition in the market for the Services;
- (B) the ongoing ability for the Existing Customers to receive the Rebates may continue to provide those Existing Customers with access to cheaper Services, where, in absence of the continuation of the Rebates, it may be more costly for those Existing Customers to continue to acquire, the Services; and
- (C) by virtue of subparagraphs (i) to (ii) above, the Existing Arrangement may provide Existing Customers with greater disposable income, thereby encouraging the growth of the small and medium businesses of the Existing Customers (which in turn, is likely to promote competition in the market places in which those small and medium businesses operate).

Further, M2 notes that many of the Existing Customers are still bound by equipment contracts with third parties. M2 submits that if M2 unilaterally ceases the provision of the Rebates to the Existing Customers, the costs that the Existing Customers incur under their third party equipment contract will no longer be mitigated, whether in whole or in part, by the Rebates. This situation is likely to place financial strain on the businesses of the Existing Customers, may hinder the ongoing viability or growth of those businesses) and will lead to time consuming and costly complaints.

(i) *Existing Customers:*

- (A) The Existing Customers are typically bound by a third party equipment contract, entered into prior to the date of the

Acquisition i.e. prior to the date that M2 proposes to provide Rebates to the Existing Customers.

- (B) The cost of receiving the Services can be in the thousands of dollars. Coupled with the cost of the equipment contract payments that the Existing Customers are compelled to make under the terms of third party equipment contract (whether or not M2 continues the Existing Arrangement), the financial capacity of the Existing Customers to continue receiving the Services (many of which are essential for the ongoing operation of a small or medium business) may be diminished. The ability for the Existing Customers to continue receiving Rebates in connection with the Services is likely to promote the ability of the Existing Customers to continue to acquire the Services and operate and grow their businesses.
- (C) Under the *Telecommunications Consumer Protections Code*, if M2 were to attempt to remove the provision of the Rebates, that conduct by M2 is likely to be considered 'unfair' and will result in complaints.

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 Services subject to this notification, relate only to the supply of those Services to the Existing Customers

The Existing Customers are small and medium business customers.

Significant suppliers of products that are substitutes for, or reasonably similar to the Services include:

- (a) Telstra via 'Telstra Business Centres';
- (b) Optus via 'Optus Business Direct'; and
- (c) Vodafone via 'Vodafone Business Centres'.

There is substantial competition in the relevant market place.

M2 is not aware on any restriction on the supply or acquisition of the Services (other than coverage limitations).

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)

M2 is not aware of any public detriment that is likely to arise from providing Call Credits to the Existing Customers

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

The Arrangement will not result in detriment for the reason set out in clause 4 above.

7. Further information

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

Scott Carter
General Manager
M2 Clear Pty Ltd
Level 10, 60 City Road
SOUTHBANK VIC 3006
+613 9674 6555

Dated..... *18/5/2011*

Signed by/on behalf of M2 Clear
..... *[Signature]*

Scott Carter
General Manager
M2 Clear Pty Ltd

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 *Competition and Consumer Act 2010* 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.