



Australian Competition and Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

21 April 2011

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam

## **Third Line Forcing Notifications - sub-sections 47(6) and (7) of the Trade Practices Act 1974**

I refer to Telstra's letter to the Commission dated 18 November 2003 ("**November 2003 Letter**"), and the Commission's letter to Amanda Bodger of Mallesons Stephen Jaques dated 15 January 2004 ("**Commission Response**").

### **November 2003 Letter and Commission Response**

The November 2003 Letter:

- (a) outlined conduct proposed to be engaged in by Telstra Licensed Shops that are operated by third parties under licence from Telstra, which conduct ("**Notified Conduct**") is summarised below; and
- (b) enclosed notices in relation to the Notified Conduct in accordance with sub-section 93(1) of the *Trade Practices Act (Cth) 1974* ("**Trade Practices Act**").

The Commission Response notified Telstra that immunity from the Trade Practices Act came into effect in relation to the Notified Conduct on 3 December 2003, and that, on the basis of the information provided to the Commission, the Commission did not intend to take any further action in relation to the matter at that stage.

### **The Notified Conduct**

Telstra undertakes campaigns to promote its mobile and other telecommunications services from time to time. In accordance with the notices enclosed with the November 2003 Letter, certain Telstra Licensed Shop licensees currently participate in these campaigns by offering certain inducements to customers on condition that they acquire or agree to acquire telecommunications services or products, or particular telecommunications services plans from Telstra.

## **Subsequent Notification Letters and Commission Responses**

From time to time, Telstra appoints new licensees to operate Telstra Licensed Shops. When this occurs, Telstra lodges new notices in accordance with sub-section 93(1) of the Trade Practices Act on behalf of those entities.

Since the November 2003 Letter, Telstra has sent further letters to the Commission to lodge notices in respect of the Notified Conduct for new licensees appointed by Telstra. The Commission has notified Telstra that these entities have been granted immunity from the Notified Conduct and that the notices have been placed on the Commission's public register.

## **Notices for further new licensee**

This letter encloses one new notice that Telstra is lodging in accordance with sub-section 93(1) of the Trade Practices Act, on behalf ACE Retail Pty Ltd (ACN 149 176 170) ("**Licensee**").

The Licensee is an entity recently appointed as a licensee by Telstra to operate a Telstra Licensed Shops. The Licensee propose to engage in the Notified Conduct.

Also enclosed is a cheque for \$100 for the fees payable in respect of the lodgement of the notices.

Please contact me on (03) 9643 4097 if you have any queries or comments.

Yours sincerely



Caroline Coops  
Partner  
Direct Line +61 3 9643 4097  
Direct fax +61 3 9643 5999

**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)*

N95378 ACE Retail Pty Ltd (ACN 149 176 170)

ACE Retail Pty Ltd (ACN 149 176 170) (“**TLS**”) operates a Telstra Shop under licence from Telstra and has been appointed by Telstra to promote the sale of, and extend the demand for, Telstra telecommunications services and related goods and services.

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

TLS supplies a range of consumer products to retail customers. These include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs.

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 50, Bourke Place  
600 Bourke Street  
Melbourne VIC 3000  
Tel: 9643 4069

**2 Notified arrangement**

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

TLS will offer a range of telecommunications and related goods or services (including mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs) (“**TLS Products**”) and/or promotional goods or services (including vouchers, cinema tickets, electrical goods and accessories and food items) (“**Promotional Products**”) to

customers on condition that they acquire telecommunications services and/or related goods or services from Telstra.

(b) Description of the conduct or proposed conduct:

TLS proposes to:

- (i) supply or offer to supply a TLS Product and/or Promotional Product to retail customers on the condition that the customer acquires or agrees to acquire telecommunications services or products or particular telecommunications services plans from Telstra;
- (ii) refuse to supply or refuse to offer to supply a TLS Product and/or Promotional Product to retail customers for the reason that the customer has not acquired or has not agreed to acquire telecommunications services or products or particular telecommunications services plans from Telstra;
- (iii) give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to a TLS Product and/or Promotional Product to retail customers on the condition that the customer acquires or agrees to acquire telecommunications services or products or particular telecommunications services plans from Telstra.

*(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)*

Retail customers (including small and medium enterprise customers).

(b) Number of those persons:

(i) At present time:

Substantially greater than 50.

(ii) Estimated within the next year:

*(Refer to direction 6)*

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)*

The proposed conduct will be of benefit to the public because it will allow retail customers to acquire TLS Products and/or Promotional Products at a discount or at no cost.

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

TLS Products include mobile phones, cordless phones, fax machines, phone cards, software, hand held computers, data products and internet starter packs. Promotional Products include vouchers, cinema tickets, electrical goods and accessories and food items. These are valuable products to many consumers and the ability to acquire them at a discount or no cost may be a significant benefit to the individual consumer.

## **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)*

There are a number of markets that may be relevant including the markets for the supply to retail consumers of phones (fixed and mobile), fax machines, hand held computers and other similar communications devices.

These markets are characterised by strong competition. There are several leading retailers of these products as well as many smaller competitors.

## **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 public detriments likely to result from the proposed conduct.

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

The proposed conduct will not lessen competition because:

- (i) the retail markets for the TLS Products and Promotional Products are characterised by large numbers of competitors and very intense competition; and
- (ii) TLS does not have a substantial degree of market power in any relevant market.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

7 **Further information**

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

Amanda Bodger  
Mallesons Stephen Jaques  
Level 50, Bourke Place  
600 Bourke Street  
Melbourne VIC 3000  
Tel: 9643 4069

Dated 21 April 2011

Signed by/on behalf of the applicant



(Signature)

Caroline Coops

(Full Name)

Mallesons Stephen Jaques

(Organisation)

Partner

(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.



11 April 2011

Attention: Casey Jephcott

ACE Retail Pty Ltd  
t/a Coffs City Telstra Store  
ABN 71 149 176 170  
Shop 9, Palms Shopping Centre, Harbour Drive  
Coffs Harbour NSW 2450

**Telstra Corporation Limited**

QV Precinct  
Level 15,  
180 Lonsdale Street  
Melbourne VIC 3000

Dear Casey,

**Third line forcing notification to Australian Competition & Consumer Commission ("ACCC")**

I refer to the suite of agreements provided to you by Telstra ("**TLS Agreements**") which upon execution by you and Telstra will authorise you to operate a Telstra Licensed Shop.

From time to time, Telstra Licensed Shops licensees are authorised to participate in campaigns conducted by Telstra to encourage customers to acquire telecommunications services or products or particular telecommunications services plans from Telstra. As part of participation in these campaigns, licensees may wish to offer customers certain inducements on condition that the customer acquires or agrees to acquire telecommunications services from Telstra (the "**proposed offer**").

As you may be aware, the proposed offer would constitute "third line forcing" and would be prohibited by the *Trade Practices Act 1974* (Cth) unless the ACCC is notified of the proposed offer in accordance with sub-section 93(1) of that Act.

**By signing the consent form below you authorise our solicitors to lodge a notice on your behalf with the ACCC.** This will only occur if you enter into the TLS Agreements. Telstra has agreed to pay the requisite fees.

Attached to this letter is a template of the notice that, once completed by Telstra with relevant details about your dealership, would be sent to the ACCC ("**Form G**"). Please review this template so you understand the consent you are providing.

**You do not need to complete the template - it is for your reference only. You only need to sign the consent form below, and return it to Telstra along with the signed TLS Agreements. Once this is done, Telstra will complete the template on your behalf, and lodge it with the ACCC.**

**WE NEED TO LODGE THESE NOTIFICATIONS AS SOON AS POSSIBLE.  
PLEASE SIGN THE CONSENT FORM BELOW AND RETURN IT TO TELSTRA.**

If you have any questions relating to this letter, please contact Telstra.

Yours sincerely

**Contract Manager  
For and on behalf of Telstra Corporation Limited**

We authorise Mallesons Stephen Jaques to give the Australian Competition and Consumer Commission notice of conduct set out in the attached draft Form G.

Signature:   
 Name: Casey Jephcott  
 Position: licensee  
 TLS: Coffs City