
FORM G

Commonwealth of Australia

Competition and Consumer Act 2010 - subsection 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition & 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 in sub-section 47(6) or (7), of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

N97606 Samsung Electronics Australia Pty Ltd (ABN 63 002 915 648)

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

Samsung is a manufacturer of a wide range of consumer electronics, mobile telecommunications, home appliances and air-conditioner products. Samsung products are sold to either:

- (i) third party **resellers** who on-sell the products to consumers; or
- (ii) third party **distributors** who on-sell the products to third party resellers.

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

Marc Dunn
General Counsel
Samsung Electronics Australia
Quad Samsung, 8 Parkview Drive, Homebush Bay NSW 2127
T: (02) 9763 9978

2. Notified arrangement

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

It is proposed that, from time to time, Samsung will offer:

- (i) consumers a bonus Samsung product/gift (the **Bonus Gift**), if the consumer acquires certain Samsung products (**Participating Product(s)**) from participating third party resellers; and/or
- (ii) third party resellers a Bonus Gift, if the third party reseller acquires Participating Product(s) from participating third party distributors.

(b) Description of the conduct or proposed conduct:

The notified conduct is as follows:

- (i) In respect of consumers,

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- (A) for a limited promotional period, Samsung will offer to supply, and will supply the Bonus Gift for no or minimal additional charge to consumers on the condition that such persons acquire the Participating Product(s) from a participating third party reseller; and
 - (B) Samsung will not supply a Bonus Gift for no or minimal additional charge to consumers who have not acquired the Participating Product from participating third party resellers.
 - (ii) In respect of third party resellers,
 - (A) for a limited promotional period, Samsung will offer to supply, and will supply the Bonus Gift for no or minimal additional charge to third party resellers on the condition that such persons or entities acquire the Participating Product(s) from a participating third party distributor; and
 - (B) Samsung will not supply a Bonus Gift for no or minimal additional charge to third party resellers who have not acquired the Participating Product from participating third party distributors.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(c) Class or classes of persons to which the conduct relates:

The notified conduct relates to:

- (i) consumers who purchase a Participating Product from a participating third party reseller; and
- (ii) third party resellers who purchase a Participating Product from a participating third party distributor for the purpose of on sale to consumers.

(d) Number of those persons:

(i) At the present time:

Unknown.

(ii) Estimate within the next year:

Unable to be estimated, but in any event more than 50

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

Not applicable

4. Public benefit claims

(f) Arguments in support of notification:

See the attached submission.

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

See the attached submission.

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):

See the attached submission.

6. Public detriments

(h) 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:

See the attached submission.

(i) Facts and evidence relevant to these detriments:

See the attached submission.

7. Further Information

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

Marc Dunn
General Counsel
Samsung Electronics Australia
Quad Samsung, 8 Parkview Drive, Homebush Bay NSW 2127
T: (02) 9763 9978

Dated..... 22 / 7 / 2014

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(Position in Organisation)

**SUBMISSION IN SUPPORT OF NOTIFICATION BY SAMSUNG ELECTRONICS AUSTRALIA
PTY LTD IN RELATION TO PROPOSED THIRD LINE FORCING CONDUCT**

2. The Conduct

2.1 The Promotion

Samsung proposes to conduct promotions from time to time which will have the following features:

- (a) the promotions will run for a limited promotional period; and
- (b) Samsung will offer a Bonus Gift to consumers who meet the following conditions:
 - (i) the consumer must have purchased a Participating Product(s) from a participating third party reseller within the period of the promotion;
 - (ii) the consumer must have complied with the Terms and Conditions of the promotion; and
 - (iii) in the case of some promotions only, the consumer must pay a nominal fee to cover Samsung's administration and delivery costs (***the Administration Fee***);

(the ***Consumer Promotion***)

and/or

- (c) Samsung will offer a Bonus Gift to third party resellers who meet the following conditions:
 - (i) the third party reseller must have purchased a Participating Product(s) from a participating third party distributor within the period of the promotion;
 - (ii) the third party reseller must have complied with the Terms and Conditions of the promotion; and
 - (iii) in the case of some promotions only, the third party reseller must pay a nominal fee to cover Samsung's administration and delivery costs (***the Administration Fee***)

(the ***Reseller Promotion***).

2.2 Terms and Conditions of the Consumer Promotion

The Bonus Gift and the Terms and Conditions applying to the Consumer Promotion will be clearly disclosed to consumers prior to their decision to purchase the Participating Product(s) by means of marketing materials, supply of an abridged version of the Terms and Conditions to participating third party resellers, and clear references the availability of the full Terms and Conditions on Samsung's website.

Third party resellers will be authorised by Samsung to participate in the Consumer Promotion. The Terms and Conditions of each Consumer Promotion will clearly set out which third party resellers are authorised to participate in the Consumer Promotion.

Consumers will not be able to obtain the Bonus Gift directly from third party resellers because the Consumer Promotion will not be administered by third party resellers. The Consumer Promotion will be administered by Samsung or its nominated agents rather than by third party resellers.

2.3 Terms and Conditions of the Reseller Promotion

The Bonus Gift and the Terms and Conditions applying to the Reseller Promotion will be clearly disclosed to third party resellers prior to their decision to purchase the Participating Product(s) by means of marketing materials, supply of an abridged version of the Terms and Conditions to participating third party distributors, and clear references to the availability of the full Terms and Conditions on Samsung's website.

Certain third party distributors will be authorised by Samsung to participate in the Reseller Promotion. The Terms and Conditions of each Reseller Promotion will clearly set out which third party distributors are authorised to participate in the Reseller Promotion.

Third party resellers will not be able to obtain the Bonus Gift directly from third party distributors because the Reseller Promotion will not be administered by third party distributors. The Reseller Promotion will be administered by Samsung or its nominated agents rather than by third party distributors.

2.4 Administration Fee

For some Consumer Promotions and Reseller Promotions, the Terms and Conditions for the promotion will require the promotion participant to pay the Administration Fee in order to claim the Bonus Gift. The Administration fee is designed to cover Samsung's administration and delivery costs of supplying the Bonus Gift. The Administration Fee will consist principally of the cost of delivering the product.

If an Administration Fee is payable in relation to a particular promotion, this will be clearly disclosed in the Terms and Conditions. In addition, point of sale materials and customer information leaflets will disclose the Administration Fee where one is applicable. The Administration Fee will be paid by the promotion participant, typically via a credit card, although, in practice, other forms of payment are accepted.

3. Relevant Markets

The Participating Product(s) are supplied to end users in national retail markets for: consumer electronics, mobile telecommunications and domestic appliances.

There are a wide range of competitors that manufacture consumer electronics and domestic appliances products in competition with Samsung, including Panasonic, Sony, LG and Fisher & Pykel. In addition, competition in the mobile telecommunications market of manufacturers of devices is particularly strong and includes Apple, Blackberry, Nokia, HTC, Motorola and Sony Ericsson.

There is also a wide range of competitors that supply consumer electronic and domestic appliances products to consumers at a retail level, ranging from large multinational corporations and nationwide franchises to smaller chain stores and local retailers. Examples include retail electronics and

appliance stores such as JB HiFi and Harvey Norman, department stores such as David Jones and Myer, on-line stores and specialty stores such as telecommunications retailers.

Samsung also supplies certain products such as monitors, printers, SSD cards and tablets to third party distributors who on-sell to resellers (who in turn sell to end-users). Samsung currently has contractual relationships with approximately 30 authorised third party distributors around Australia.

4. Public Benefits

The proposed conduct will provide the following benefits to the public:

- (a) the promotions will provide consumers with the Bonus Gift either at no cost or at the small cost of the Administration Fee;
- (b) the proposed conduct does not require consumers or third party resellers to participate in the promotions;
- (c) the proposed conduct does not require consumers or third party resellers to purchase the Participating Product(s) other than on a normal commercial basis;
- (d) the Participating Product(s) will be available for purchase by consumers and third party resellers outside of the promotions;
- (e) consumers and third party resellers will have a genuine choice, based on quality, price, and service, whether to purchase the Participating Product(s) alone or to accept the package of the Participating Product(s) and the Bonus Gift; and
- (f) the proposed conduct will promote competition in relevant markets by encouraging Samsung's competitors to offer similar bonuses or gift offers.

The significant public benefits outlined above will outweigh any potential anti-competitive detriment which may arise from the proposed conduct.

5. Public Detriments

The proposed conduct will not result in any detriment in the relevant markets as:

- (a) consumers and third party resellers are not compelled to participate in the promotions;
- (b) consumers and third party resellers have a genuine choice, based on quality and price, whether or not to purchase the Participating Product(s) alone or to participate in the promotions;
- (c) consumers and third party resellers who choose not to participate in the promotions may acquire the Participating Product(s) outside of the promotions;
- (d) if a consumer or third party reseller does choose to participate, the Bonus Gift will be able to be acquired at no or minimal additional cost to the consumer or third party reseller;
- (e) consumer electronics, mobile telecommunications and home appliances markets include a large number of vigorous competitors such as:

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- (i) at the retail level, Panasonic, LG, Sony and Fisher & Pykel, Apple, Blackberry, Nokia, HTC, Motorola and Sony Ericsson; and
 - (ii) at the distribution level, Ingram Micro, Synnex, Dicker Data, Dynamic Supplies, Force Technology, World's Best Technology, Brighstar Logistics, Globalrez and Roadhound; and

consumers and third party resellers may therefore acquire substitutable goods from a large variety of other suppliers;

- (f) competitors of Samsung products are able to, and do, make offers which are similar to the promotions and the proposed conduct will not restrict any competitors from offering similar goods to those offered by Samsung in the promotions or from offering similar promotions.

Therefore, any detriments that may occur will be outweighed by the public benefits of the conduct.