

## TRADE PRACTICES ACT 1974

### Part A Competition Notice issued pursuant to subsection 151AKA(2)

To: Telstra Corporation Limited (ACN 051 775 556)  
Level 41, 242 Exhibition Street  
MELBOURNE VIC 3000

#### PREAMBLE

This Notice is a Part A Competition Notice issued by the Australian Competition and Consumer Commission ('the Commission') pursuant to subsection 151AKA(2) of the *Trade Practices Act 1974* ('the Act') to Telstra Corporation Limited (ACN 051 775 556) ('Telstra').

#### DEFINITIONS

The following terms used in this Notice (including the Schedules to this Notice) have the following meanings:

- a) 'ADSL' means Asymmetrical Digital Subscriber Line;
- b) 'AGVC' means Aggregating Virtual Circuit;
- c) 'ATM' means Asynchronous Transfer Mode;
- d) 'Broadband Services' means services enabling high speed internet usage with high capacity limits and download speeds of greater than or equal to 256 Kbps, provided by infrastructure such as copper (using ADSL technology), fibre optic or coaxial cable;
- e) 'Carrier' has the meaning given by section 151AB of the Act;
- f) 'DSL' means Digital Subscriber Line;
- g) 'GB' means gigabyte;
- h) 'ISP' means Internet Service Provider;
- i) 'Kbps' means kilobits per second;
- j) 'MB' means megabyte;
- k) 'Mbps' means megabits per second;
- l) 'New Wholesale Prices' means Telstra's prices to Wholesale Customers for certain Broadband Services being the prices for monthly access services listed in Schedule 2 to this Notice;
- m) 'POP' means Point of Presence;
- n) 'Retail Customers' includes single user customers, and residential and small business end user customers throughout Australia;
- o) 'Retail Prices' means Telstra's prices to Retail Customers for its Broadband Services being the prices for the services listed in Schedule 1 to this Notice;
- p) 'supply' has the meaning given by section 4C of the Act;
- q) 'Telecommunications Market' has the meaning given by section 151AF of the Act;
- r) 'Wholesale Customers' includes business customers who purchase and resupply Telstra's Broadband Services to Retail Customers and who have access to Telstra's networks by commercial arrangement with Telstra so that they may re-supply Telstra's Broadband Services to Retail Customers throughout Australia;
- s) 'wholesale prices' means Telstra's prices to Wholesale Customers for Broadband Services on or from early February 2004 and as modified thereafter.

**Explanatory Note:** The singular includes the plural and the plural includes the singular.

## **SUBSECTION 151AKA(2) STATEMENT**

1. Telstra has engaged, and is engaging, in at least one instance of anti-competitive conduct of a kind described in this Notice.

## **REASON TO BELIEVE**

2. The Commission has reason to believe that Telstra has engaged, and is engaging, in at least one instance of anti-competitive conduct of a kind described in this Notice.

## **CARRIER**

3. Telstra does and did at all material times hold a carrier licence issued on 1 July 1997 pursuant to section 56(1) of the *Telecommunications Act 1997*.
4. Telstra is and was at all material times a “carrier” as defined in section 151AB of the Act.

## **TELECOMMUNICATIONS MARKETS**

5. At all material times, there were and are Telecommunication Markets in Australia for:
  - a) the supply of wholesale Broadband Services to Wholesale Customers (‘the Wholesale Broadband Market’); and
  - b) the supply of retail Broadband Services to Retail Customers (‘the Retail Broadband Market’).

## **POWER IN A TELECOMMUNICATIONS MARKET**

6. In the supply of wholesale Broadband Services in the Wholesale Broadband Market, Telstra is not materially constrained by the conduct of:
  - a) Telstra’s competitors or potential competitors in the Wholesale Broadband Market;  
or
  - b) persons to whom Telstra supplies services in the Wholesale Broadband Market.
7. Telstra has a substantial degree of market power in the Wholesale Broadband Market.

## **CONDUCT**

8. From at least early February 2004, Telstra has supplied:
  - a) Broadband Services in the Wholesale Broadband Market to Wholesale Customers;  
and
  - b) Broadband Services in the Retail Broadband Market to Retail Customers, in competition with its Wholesale Customers.

9. From at least early February 2004, Telstra has supplied its Wholesale Customers with Broadband Services at wholesale prices.
10. On or about 15 February 2004, Telstra commenced offering to supply Retail Customers with Broadband Services, in competition with its Wholesale Customers, at the Retail Prices. Since that date Telstra has continued to make such offers.
11. On 25 February 2004, the Commission gave Telstra an Advisory Notice pursuant to subsection 151AQB(1) of the Act advising that in order to ensure that it did not engage, or continue to engage, in anti-competitive conduct, Telstra should with effect from 26 February 2004, reduce the wholesale prices for the supply of Broadband Services to Wholesale Customers to a level below the Retail Prices being sufficient to enable its Wholesale Customers to supply Broadband Services to Retail Customers at prices which do not substantially hinder or prevent those Wholesale Customers from competing with Telstra in the Retail Broadband Market.
12. On or about 26 February 2004, Telstra commenced offering to supply its Wholesale Customers with Broadband Services at wholesale prices including the New Wholesale Prices. Since that date Telstra has continued to make such offers.
13. On or about 27 February 2004, Telstra commenced supplying Retail Customers with Broadband Services, in competition with its Wholesale Customers, at the Retail Prices. Since that date Telstra has continued to supply Retail Customers with Broadband Services at the Retail Prices.
14. On or about 27 February 2004, Telstra commenced supplying its Wholesale Customers with Broadband Services at wholesale prices including the New Wholesale Prices. Since that date Telstra has continued to supply Wholesale Customers with Broadband Services at wholesale prices including the New Wholesale Prices.
15. In the period since about 27 February 2004, Telstra has negotiated further changes to its wholesale prices (in addition to the New Wholesale Prices in Schedule 2 to this Notice) with some of its Wholesale Customers. An example of Telstra's wholesale prices to one of its Wholesale Customers as at the date of this Notice is set out in Schedule 3.
16. From at least 15 February 2004 to the present and continuing:
  - a) Telstra has supplied, and continues to supply, wholesale Broadband Services to its Wholesale Customers at wholesale prices set at a level whereby there was and is only a small positive or negative difference between those wholesale prices and the Retail Prices; and
  - b) Telstra has refused, and continues to refuse, to supply wholesale Broadband Services to its Wholesale Customers at prices other than wholesale prices set at a level whereby there was and is only a small positive or negative difference between those wholesale prices and the Retail Prices.
17. An example of this difference in respect of one of Telstra's Wholesale Customers is set out in Schedule 4 to this Notice. While the difference in respect of other Wholesale

Customers is not necessarily the same as that set out in Schedule 4 to this Notice, the difference set out in Schedule 4 is indicative of the position of Telstra's other Wholesale Customers.

18. The matters set out above in paragraphs 8 to 10 and 12 to 17 (being the customer referred to in paragraph 15 above) is the conduct described in this Notice.

### **TAKING ADVANTAGE OF MARKET POWER**

19. Telstra's ability to engage in the conduct described in this Notice was and is made possible or materially facilitated by its substantial degree of market power in the Wholesale Broadband Market.
20. Telstra has taken and is taking advantage of its substantial degree of market power in the Wholesale Broadband Market by engaging in the conduct described in this Notice.

### **EFFECT OR LIKELY EFFECT OF TAKING ADVANTAGE**

21. Telstra's conduct described in this Notice, by which it has taken and is taking advantage of its market power in the Wholesale Broadband Market, had and has the effect, or likely effect, of substantially lessening, preventing or hindering competition in the Retail Broadband Market in at least one or more of the following respects:
- a) from at least 15 February 2004 to the present and continuing, Telstra's Wholesale Customers were and are substantially prevented from supplying or hindered in their ability to supply Broadband Services to Retail Customers at prices which enable those Wholesale Customers to compete in the medium to long term with Telstra in the Retail Broadband Market in at least one or more of the following respects:
    - i) Wholesale Customers are substantially prevented or hindered from setting retail prices that enable them to recover the costs of re-supplying Broadband Services in the Retail Broadband Market in the medium to long term; and
    - ii) Wholesale Customers are unable to supply Broadband Services in the Retail Broadband Market other than at a loss or very small profit margin thereby preventing them from operating viable businesses in the medium to long term; and
  - b) the barriers preventing or hindering suppliers and potential suppliers of Broadband Services to Retail Customers from entering into or expanding within the Retail Broadband Market, have been, and continue to be, substantially increased in at least one or more of the following respects:
    - i) Wholesale Customers are unable to generate sufficient business to develop and take advantage of economies of scale and scope;
    - ii) Wholesale Customers are substantially prevented or hindered from setting retail prices that enable them to recover the costs of re-supplying Broadband Services in the Retail Broadband Market in the medium to long term;

- iii) Wholesale Customers are unable to supply Broadband Services in the Retail Broadband Market other than at a loss or very small profit margin thereby preventing them from operating viable businesses in the medium to long term;
- iv) as Wholesale Customers are and will be dependent on Telstra for the supply of wholesale Broadband Services in the medium to long term, Wholesale Customers are substantially hindered or prevented from developing and implementing efficient business operations as a result of the known possibility of Telstra engaging in conduct of a kind referred to in this Notice;
- v) Wholesale Customers wishing to expand their business within the Retail Broadband Market are and would be substantially hindered or prevented from doing so by reason that they would incur substantially higher costs than those that would otherwise be incurred as a result of the known possibility of Telstra engaging in conduct of a kind referred to in this Notice; and
- vi) Any potential competitor wishing to enter into the Retail Broadband Market is and would be substantially hindered or prevented from doing so by reason that they would incur substantially higher costs than those that would otherwise be incurred as a result of the known possibility of Telstra engaging in conduct of a kind referred to in this Notice.

22. Further or alternatively to paragraph 21, each instance of Telstra's conduct described in this Notice, by which it has taken and is taking advantage of its market power in the Wholesale Broadband Market, taken together with one or more of the other instances of Telstra's conduct described in this Notice, had and has the combined effect, or likely combined effect, of substantially lessening, preventing or hindering competition in the Retail Broadband Market in one or more of the respects referred to in paragraph 21.

### **KINDS OF ANTI-COMPETITIVE CONDUCT**

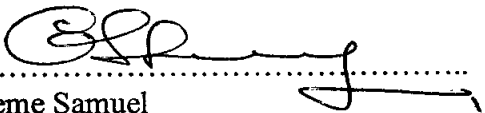
23. Each of the following kinds of conduct is a kind of anti-competitive conduct described in this Notice:
- a) Conduct by Telstra of the kind referred to in paragraph 16 a) having the effect, or likely effect, of substantially lessening, preventing or hindering competition as referred to in paragraph 21; and
  - b) Conduct by Telstra of the kind referred to in paragraph 16 b) having the effect, or likely effect, of substantially lessening, preventing or hindering competition as referred to in paragraph 21.
24. Further or alternatively to paragraph 23, each of the following kinds of anti-competitive conduct is a kind of conduct described in this Notice:

- a) Conduct by Telstra of the kind referred to in paragraph 16 a) having the effect, or likely effect, of substantially lessening, preventing or hindering competition as referred to in paragraph 22; and
- b) Conduct by Telstra of the kind referred to in paragraph 16 b) having the effect, or likely effect, of substantially lessening, preventing or hindering competition as referred to in paragraph 22.

**DURATION**

- 25. This notice comes in to force on Saturday 20 March 2004.
- 26. This notice remains in force until Saturday 19 March 2005.

DATED: 19 March 2004

  
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Graeme Samuel  
Chairperson  
Australian Competition and Consumer Commission

**SCHEDULE 1****TELSTRA RETAIL PRICES**

| <b>TABLE A: TELSTRA BIGPOND BROADBAND ADSL 12 MONTH PLANS</b> |                           |                                |                                    |                         |                                                       |
|---------------------------------------------------------------|---------------------------|--------------------------------|------------------------------------|-------------------------|-------------------------------------------------------|
| <b>Plan</b>                                                   | <b>Maximum Speed Kbps</b> | <b>Monthly Usage Allowance</b> | <b>Rate per MB after allowance</b> | <b>Additional Users</b> | <b>Retail Prices (Monthly fee on a 12 month plan)</b> |
| 200MB 256/64 Kbps                                             | 256/64                    | 200MB                          | 15 c                               | Up to 7                 | \$29.95                                               |
| 500MB 256/64 Kbps                                             | 256/64                    | 500MB                          | 15c                                | Up to 7                 | \$49.95                                               |
| 500MB 512/128 Kbps                                            | 512/128                   | 500MB                          | 15c                                | Up to 7                 | \$59.95                                               |
| 500MB 1500/256 Kbps                                           | 1500/256                  | 500MB                          | 15c                                | Up to 7                 | \$69.95                                               |
| 2GB 512/128 Kbps                                              | 512/128                   | 2GB                            | 15c                                | Up to 7                 | \$79.95                                               |
| 2GB 1500/256 Kbps                                             | 1500/256                  | 2GB                            | 15c                                | Up to 7                 | \$109.95                                              |
| 20GB 1500/256 Kbps                                            | 1500/256                  | 20GB                           | 15 c                               | Up to 7                 | \$149.95                                              |
| Unlimited Downloads                                           | 256/64                    | Unlimited Downloads            | N/A                                | Up to 7                 | \$59.95                                               |
| Unlimited Downloads                                           | 512/128                   | Unlimited Downloads            | N/A                                | Up to 7                 | \$89.95                                               |
| Unlimited Downloads                                           | 1500/256                  | Unlimited Downloads            | N/A                                | Up to 7                 | \$119.95                                              |

| TABLE B: TELSTRA BIGPOND BROADBAND CABLE 12 MONTH PLANS |                   |                         |                             |                  |                                                |
|---------------------------------------------------------|-------------------|-------------------------|-----------------------------|------------------|------------------------------------------------|
| Plan                                                    | Maximum Speed     | Monthly Usage Allowance | Rate per MB after allowance | Additional Users | Retail Prices (Monthly fee on a 12 month plan) |
| 200MB                                                   | Uncapped /128Kbps | 200MB                   | 15c                         | Up to 7          | \$29.95                                        |
| 500MB                                                   | Uncapped /128Kbps | 500MB                   | 15c                         | Up to 7          | \$49.95                                        |
| Unlimited Downloads                                     | Uncapped /128Kbps | Unlimited Downloads     | N/A                         | Up to 7          | \$59.95                                        |

| TABLE C: TELSTRA BIGPOND BROADBAND 24 MONTH PLANS                                                                    |                                              |                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plan                                                                                                                 | Additional Offerings                         | Retail Prices<br>(Monthly fee on a 24 month plan available from 27 February 2004 entered into between 16 February 2004 and 29 February 2004 inclusive) |
| Each of the Telstra BigPond Broadband ADSL Plans listed in Table A above in this Schedule for a period of 24 months  | Two months free access                       | Each of the corresponding monthly fees listed in Table A above in this Schedule                                                                        |
| Each of the Telstra BigPond Broadband Cable Plans listed in Table B above in this Schedule for a period of 24 months | Free installation and two months free access | Each of the corresponding monthly fees listed in Table B above in this Schedule                                                                        |



**SCHEDULE 2****TELSTRA NEW WHOLESALE PRICES FOR MONTHLY ACCESS SERVICES AS  
AT 26 FEBRUARY 2004 (WITH EFFECT FROM 15 FEBRUARY 2004)**

| Maximum Speed<br>Kbps | Applicable Geographic<br>Area | New Wholesale Price<br>(Monthly Fee) |
|-----------------------|-------------------------------|--------------------------------------|
| 256/64                | National                      | \$29.75                              |
| 512/128               | National                      | \$44.85                              |
| 1500/256              | National                      | \$75.18                              |

**SCHEDULE 3****AN EXAMPLE OF WHOLESALE PRICES**

| TELSTRA WHOLESALE PRICES                             |                                  |
|------------------------------------------------------|----------------------------------|
| Monthly wholesale ADSL internet grade <sup>1</sup> : |                                  |
| Speed                                                | Wholesale Price<br>(Monthly fee) |
| 256/64 Kbps                                          | \$27.00                          |
| 512/128 Kbps                                         | \$37.21                          |
| 1500/256 Kbps                                        | \$62.01                          |
| Connection charge:                                   |                                  |
| Installation charge of \$80 per end user access      |                                  |
| Backhaul:                                            |                                  |
| AGVC charges <sup>2</sup> : (Monthly charges)        |                                  |
| AGVC Size                                            | Monthly charge                   |
| 1Mbps                                                | \$224                            |
| 2 Mbps                                               | \$396                            |
| 4 Mbps                                               | \$745                            |
| 8 Mbps                                               | \$1,163                          |
| 16 Mbps                                              | \$1,465                          |
| 32 Mbps                                              | \$2,197                          |
| 48 Mbps                                              | \$3,250                          |
| 64 Mbps                                              | \$4,286                          |
| Transport from ATM switch to ISP premises:           |                                  |
| Installation                                         | \$20,000                         |
| Monthly                                              | \$3,145                          |

<sup>1</sup> In this example, monthly wholesale access fee ADSL internet grade charges are lower than the New Wholesale Prices.

<sup>2</sup> The monthly charge for an Aggregating Virtual Circuit is determined by reference to the distance between the Aggregation Point Charging POP for the State in which the Wholesale Customer has End User Accesses and the ATM Charging POP for the ATM Service associated with that AGVC.

**SCHEDULE 4****AN EXAMPLE OF THE DIFFERENCE REFERRED TO IN PARAGRAPH 16 OF THIS NOTICE**

| Plan as listed in Table A of Schedule 1 above | Maximum Speed Kbps | Retail Prices (Monthly fee on a 12 month plan) | Estimated wholesale prices* (per subscriber) | An example of the difference referred to in paragraph 16 of this Notice |
|-----------------------------------------------|--------------------|------------------------------------------------|----------------------------------------------|-------------------------------------------------------------------------|
| 200MB 256/64 Kbps                             | 256/64             | \$29.95                                        | \$34.42                                      | (\$4.47)                                                                |
| 500MB 256/64 Kbps                             | 256/64             | \$49.95                                        | \$34.42                                      | \$15.53                                                                 |
| 500MB 512/128 Kbps                            | 512/128            | \$59.95                                        | \$45.57                                      | \$14.38                                                                 |
| 500MB 1500/256 Kbps                           | 1500/256           | \$69.95                                        | \$71.38                                      | (\$1.43)                                                                |
| 2GB 512/128 Kbps                              | 512/128            | \$79.95                                        | \$45.57                                      | \$34.38                                                                 |
| 2GB 1500/256 Kbps                             | 1500/256           | \$109.95                                       | \$71.38                                      | \$38.57                                                                 |
| 20GB 1500/256 Kbps                            | 1500/256           | \$149.95                                       | \$71.38                                      | \$78.57                                                                 |
| Unlimited Downloads                           | 256/64             | \$59.95                                        | \$34.42                                      | \$25.53                                                                 |
| Unlimited Downloads                           | 512/128            | \$89.95                                        | \$45.57                                      | \$44.38                                                                 |
| Unlimited Downloads                           | 1500/256           | \$119.95                                       | \$71.38                                      | \$48.57                                                                 |

\*Estimation of wholesale prices includes monthly wholesale access fee ADSL internet grade charges, connection charges, AGVC costs and ATM to ISP transport estimated and is based on:

- (1) The connection charge is amortised over a 20 month period;
- (2) Aggregated virtual circuits used 16 Mbps link;
- (3) Speed of link used in transporting data from ATM switch to ISP premises is taken as 155Mbps; &
- (4) Percentage of customers allocated to each plan:
  - 27% at 256/64 kbps;
  - 59% at 512/128 kbps;
  - 14% at 1500/256 kbps; and
  - 0% at 512/512 kbps.

These estimated example differences do not take into account additional costs necessary to provide Broadband Services to Retail Customers.