



**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974**

BY

ALLIANCE WA PTY LTD (ACN 101 521 233)

BACKGROUND

- (1) ALLIANCE WA PTY LTD (ACN 101 521 233) (“Alliance”) is incorporated in the state of Western Australia and its principal activities include the supply of mobile phones and mobile phone network plan contracts by retail to consumers in Australia.
- (2) From 17 October 2002 through to 9 November 2002, Alliance ran a series of three advertisements (“the Advertisements”) in *The West Australian* newspaper promoting various mobile phones and the Vodafone Pty Ltd “No Plans” call plan. Copies of the Advertisements are annexed at Annexure “A”.
- (3) The first advertisement (“Advertisement 1”) appeared on 17, 23, 24 and 28 October 2002 and was prominently headed “FREE MEANS FREE ” followed by a list of representations such as “Free from network contracts”, “Free from ridiculous call rates”, “Free from stupid peak rates” and “Free from thieving thirty second billing”, next to a picture of a Nokia 3315 mobile phone. Advertisement 1 also contained, amongst other things, the representation “\$12.50/mth for 18 months interest free (we pay it)” and below this, the representation “Total cost \$225, you compare it!”.
- (4) Advertisement 2 appeared on 30 October and 4 November 2002 and also pictured a Nokia 3315 mobile phone prominently headed by “FREE MEANS FREE” and followed by a list of representations including “Free connection to ‘No Plans’. Save \$29.95rrp.”, “Free from lock-in network contracts”, “Free from stupid peak rates” and “Free from thieving thirty second billing”. It also contained the representation “It’s just \$12.50/mth for 18 months. Total Cost \$225. That’s it!”.
- (5) Advertisement 3 appeared on 2 and 9 November 2002 and was prominently headed “The Nokia free-for-all” followed by a list of representations below it such as “Free connection to ‘No Plans’”, “Free from flag falls on standard calls”, “Free from stupid peak rates” and “Free from thieving thirty second billing”. Featured below the advertisements heading and next to the list of representations were the pictures of the Nokia 3315, 5219 and 8250 mobile phones. Below the aforementioned phones in a bordered box were the representations “Nokia 3315. It’s just \$12.50/mth for 18 months. Total cost \$225. That’s it!”, “Nokia 5210. It’s just \$19.50/mth for 18 months. Total cost \$351. That’s it!” and “Nokia 8250. It’s just \$22.50/mth for 18 months. Total cost \$405. That’s it!”, respectively.

- (6) The Advertisements, through the use of the word “Free” in the headings, coupled with the list of “Free from...” items and the representations “It’s just \$X/mth for 18 months. Total cost \$Y. That’s it!” (Advertisements 2 & 3), may have misled consumers to believe that all calls and the mobile phone would cost a total of \$Y and no more. In fact, under “No Plans” any calls made by consumers would incur an additional per second charge.
- (7) Alliance acknowledges that its conduct described in paragraphs (2) to (6) above may have contravened sections 52 and 53(e) of the *Trade Practices Act* 1974 (“the Act”) by:
- representing or conveying the overall impression that, upon purchasing the mobile phone and joining “No Plans”, the total cost of the mobile phone and call package, including the cost of calls, would be the amount represented in the advertisements as the “Total cost” when, in fact, any calls made would incur an additional charge; and
 - conveying false or misleading representations with respect to the price of calls and/or the price of the mobile phone and call packages.
- (8) Alliance has, since being approached by the Commission with respect to the Advertisements, cooperated fully with the Commission in its inquiries and immediately ceased the conduct referred to in paragraphs 2 to 6 above.
- (9) Alliance gives the following undertaking to the Commission for the purposes of section 87B of the Act:

UNDERTAKING

Alliance undertakes to:

- A. Not misrepresent the total cost of a mobile phone and/or calls package in its future advertisements and, in particular (without limiting the generality of this undertaking A) not misrepresent that the cost stated in its advertisements includes call charges in circumstances where this is not the case.
- B. Should it misrepresent in any future advertisement that the cost of a mobile phone and /or calls package is the total cost of a mobile phone and/or calls package when it is not (for example, by representing that the cost stated in the advertisement includes call charges when it does not), not require subscribers to that mobile phone and/or calls package to pay any charges, including any call charges, additional to the cost misrepresented in the advertisement as the total cost of that mobile phone and/or calls package.
- C. Within 7 days of the acceptance of this undertaking by the Commission, telephone all customers who purchased any of the mobile phones referred to in the Advertisements and who subscribed through it to ‘No Plans’ during the period 17

October to 9 November 2002 in accordance with a script to be approved by the Commission. Amongst other things, the script shall advise customers:

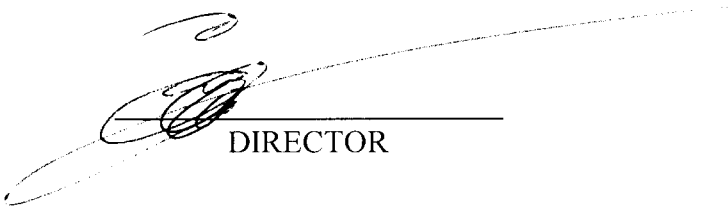
- of the concerns raised by the Commission and, in particular, that the Advertisements may have misled customers to believe that the costs stated in the Advertisements included call costs when, in fact, the cost of calls is extra;
 - of the relevant call costs; and
 - that if they believe they were misled by the Advertisements, they can return their mobile phone to Alliance and Alliance will cancel the customer's contract (without penalty) and refund any instalment payments paid by the customer for the mobile phone.
- D. Within twenty one days of the date of the acceptance of this undertaking, provide written confirmation to the Commission that it has contacted all relevant customers in accordance undertaking C above.
- E. In the event that a customer contacted in accordance with undertaking C above elects to return their mobile phone to Alliance, immediately cancel that customer's contract (without penalty) and refund any instalment payments paid by the customer for the mobile phone.
- F. Within three months of the date of acceptance of this undertaking by the Commission:
- implement; and
 - henceforth maintain for a period of not less than two years; at its own expense and with the assistance of its external solicitors, a Trade Practices Compliance Program ("Compliance Program") in respect of sections 52 and 53 of the Act for employees or other persons involved in its business designed to ensure their awareness of the responsibilities and obligations in respect of the aforementioned sections.
- G. Within a date no later than one year from the date of this undertaking, cause its external solicitors to review Alliance's Compliance Program and, within a date no less than thirteen months from the date of this undertaking, cause its external solicitors to provide written confirmation to the Commission of the performance of the review as well as report on Alliance's implementation of, and adherence to, the Compliance Program.

ACKNOWLEDGEMENTS

1. Alliance acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
2. Alliance acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Alliances' conduct.

IN WITNESS OF THIS UNDERTAKING

THE COMMON SEAL OF)
Alliance WA Pty Ltd)
was hereunto affixed by authority)
of the Board of Directors)
previously given in the presence of:



DIRECTOR

This *9th* day of January 2003

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES
ACT 1974



Acting CHAIRMAN

This *10th* day of January 2003



's Tim Gibbons, centre, with Selena Shalkh, Nathan Calverley, Reegan Woodley and Callum Thomas, all 10. PICTURE: DIONE DAVIDSON

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AsthmaSwim runs an Education Department approved syllabus and offers Royal Life Saving Association Awards.

According to foundation statistics, one in five primary and one in seven secondary school students have asthma, which makes it is the most common problem affecting Australian school children.

AsthmaSwim's term four program costs \$48.50 per child for eight classes, with classes for adults as well.

For more information, call 9481 1234.

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Students often felt pressured at this time of year by parents and friends, no matter how well-intentioned those people might be, he said. Anxiety affected their performance and he believed all students would benefit from simple relaxation techniques.

"Proper breathing habits and simple exercises relax the body and mind," Mr Greeshaw said. "With a positive mental state and by looking after themselves physically, students are better able to respond to the demands of anxiety." Simple personal affirmations also helped.

Drama students have already had their practical exams and language oral and music practical exams will be held later.

The first written exam is history on November 6.

The last exam is German on November 22.

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but she's looking a lot better than she was," Mrs Gillam said. "She's not speaking fluently, but her messages are coming through clearly and that gives me a lot of hope. I've just got to be strong and keep believing because we've still got a lot to do."

Ms Cuthbert has received about 500 cards from well-wishers.

FREE MEANS FREE



- Free from network contracts
- Free from ridiculous call rates
- Free from flag falls on any standard call
- Free to use voicemail at no cost
- Free from stupid peak rates
- Free from thieving 30 sec billing
- Free to keep your number or we'll give you one
- Free to bring your own phone; OR

Pay nothing upfront

- \$12.50 per month for 18 months interest free (we pay it)
- Total cost \$225, you compare it!
- Available to credit approved customers for a limited time
- Fees payable if you default or request copies of documents

 **vodafone alliance**

FEEL FREE TO CALL 13 88 50 now!

- Booragoon • Busselton • Como • Fremantle
- Joondalup • Karrinyup • Midland • Morley
- Vic Park • West Perth • Whitfords

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3
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2

FREE MEANS FREE



Free connection to 'No Plans'.
Save \$29.95rrp.

Free from lock-in network contracts

Free to use voice mail at no cost

Free from flag falls on standard calls

Free from thieving 30 sec billing

Free from stupid peak rates

Free to keep your own number or
we'll give you one

YOU PAY NOTHING UP FRONT

Nokia 3315

It's just **\$12.50/mth** for 18 months.
Total cost **\$225**. That's it!

Available to credit approved customers for a limited time.
Fees payable if you default or request copies of documents.

vodafone alliance

FEEL FREE TO CALL 13 88 50 now!

- Booragoon • Busselton • Clarkson • Como
- Fremantle • Joondalup • Karrinyup • Midland
- Morley • Vic Park • West Perth • Whitfords

LIQ

join the club



**Seaview
Sparkling Merlot**
\$69⁹
by the 1

STARTS WEDNESDAY
ALL P

WANT M



It's just \$12.50/mth for 18 months. Total cost \$225. That's it!

It's just \$19.50/mth for 18 months. Total cost \$351. That's it!

It's just \$22.50/mth for 18 months. Total cost \$405. That's it!

YOU PAY NOTHING UP FRONT

<p>Nokia 3315 It's just \$12.50/mth for 18 months. Total cost \$225. That's it!</p>	<p>Nokia 5210 It's just \$19.50/mth for 18 months. Total cost \$351. That's it!</p>	<p>Nokia 8250 It's just \$22.50/mth for 18 months. Total cost \$405. That's it!</p>
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