

**TRADE PRACTICES ACT 1974****UNDERTAKINGS TO THE TRADE PRACTICES COMMISSION
GIVEN FOR THE PURPOSE OF SECTION 87B****BY****BELLSOUTH AUSTRALIA PTY LIMITED
(ACN 006 085 5340 of Level 8/600 St Kilda Rd Melbourne)****BACKGROUND**

BellSouth Australia Pty Limited is a registered corporation and the registered owner of the business name *Link Telecommunications*.

BellSouth Australia Pty Limited trading as *Link Telecommunications* advertised and offered for sale *Motorola Micro TAC 5200* and *Motorola Micro TAC 7200* series digital mobile telephones to consumers. The *Trade Practices Commission* alleges that these advertisements failed to disclose certain material and significant conditions relating to the offer and the advertisements were thereby misleading and deceptive or likely to mislead or deceive.

The Motorola Micro TAC 5200 advertisements

An advertisement appeared in most major national daily newspapers on 6 October 1994 for a *Motorola Micro TAC 5200* digital mobile telephone. At the top of the advertisement the prominent representation *Link's Dynamic Deals! \$399** appears. Lower in the advertisement in small print appear the words *conditions apply**.

Enquiries indicated the offer included as a condition a 12 month term agreement with *Optus*, a \$50 minimum call charge per month and a \$25 per month access fee.

Similar advertisements appeared in various national newspapers in October 1994.

They contained a statement in small print : **Offer subject to 12 months term*

agreement with minimum call usage of \$50 per month. Enquiries indicated the offer included as a condition a monthly access fee of \$25.

The Motorola Micro TAC 7200 advertisement

An advertisement for a *Motorola Micro TAC 7200* digital mobile telephone appeared in most national newspapers between 17 October 1994 and 21 October 1994. The top of this advertisement contains the prominent representation *Link's Dynamic Deal's! \$599**. Lower in the advertisement in small print appear the words **Offer subject to 12 month term agreement with minimum call usage of \$50 per month.* Enquiries indicated the offer included as a condition a monthly access fee of \$25.

BellSouth Australia Pty Limited has agreed to give the following undertakings for the purpose of section 87B of *the Act*.

Undertakings

BellSouth Australia Pty Limited undertakes for the purposes of section 87B of *the Act* on behalf of itself and any and all subsidiaries and any business entities controlled by *BellSouth Australia Pty Limited* that:

1. It will in any future advertising or promotional material where the obtaining of a digital mobile telephone at a particular represented price is conditional upon the entering into a service contract or arrangement for access to a mobile telephone network, clearly, prominently and fully disclose;
 - (a) that the particular price for the telephone is conditional upon the purchaser entering into a service contract arrangement for access to a mobile telephone service network;

- (b) the total minimum cost of purchasing the mobile telephone and entering into the service contract or arrangement for access to the mobile telephone service network; and
 - (c) the existence and quantum of any other charges, with the exception of the usual call charges.
- 2. It will to send to each customer who responded to any of the advertisements which appeared from 6 October 1994 until 21 October 1994 and who purchased a \$399 *Motorola Micro TAC 5200* and/or a \$599 *Motorola Micro TAC 7200* within 21 days of the signing of these undertakings, a letter explaining the full terms of the contract and offer all such customers the option of reversing the transaction.
- 3. The letter sent to customers as described in 2 above will advise customers that in the event they elect to have their transaction with *Link* reversed, they must do so within a period of one month from the time of receiving the letter.
- 4. Having regard to the compliance program to be prepared by other industry participants under similar undertakings provided to the *Trade Practices Commission*, a copy of which will be provided by the *Trade Practices Commission* to *BellSouth Australia Pty Limited*, *BellSouth Australia Pty Limited* will, within 2 months of the date of receipt of a copy of such compliance program, adapt and institute a corporate compliance program for a three year period, in a form approved by the *Trade Practices Commission*, for *BellSouth Australia Pty Limited*, all subsidiaries of *BellSouth Australia Pty Limited*, and all business entities controlled by *BellSouth Australia Pty Limited* [the group] with the following characteristics.

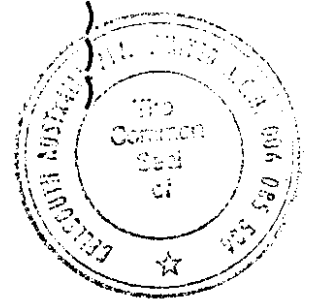
- (a) **Aim**
- To create a culture of compliance throughout the group and to prevent so far as is reasonably possible any contraventions of *the Act* by the group or by its directors, employees or agents.
- (b) **Group Policy**
- The formal adoption or reaffirmation by *BellSouth Australia Pty Limited* of a policy of strict compliance with both the letter and spirit of *the Act* throughout the group and adoption, or reaffirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of *the Act*.
- (c) **Compliance Infrastructure**
- The appointment of an appropriately qualified senior executive as the Group Compliance Officer with overall responsibility for compliance with *the Act*. The creation within the group of suitable audit referral procedures to enable potential contraventions of *the Act* to be identified and dealt with appropriately.
- (d) **Coverage**
- The compliance program is to cover all group directors, employees and agents whose duties could result in their being concerned in conduct that might breach *the Act* [the relevant staff].
- (e) **Education**
- Development and implementation of an education program calculated to have the relevant staff conversant with the provisions of *the Act* to a level where:

- (i) general staff can avoid contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in the group compliance infrastructure;
- (ii) persons with responsibilities within the group compliance infrastructure can effectively carry out those responsibilities; and
- (iii) the group compliance Officer can address more complex Trade Practices issues and (if that person is neither legally qualified nor able to give the relevant advice) identify issues which require referral to the group's legal advisers.

BELLSOUTH AUSTRALIA PTY LIMITED acknowledges and accepts that this undertaking will be placed on the *Trade Practices Commission's* public register and agrees that the *Trade Practices Commission* may otherwise publish and refer to this document at its discretion.

IN WITNESS OF THESE UNDERTAKINGS

The COMMON SEAL OF BELLSOUTH AUSTRALIA PTY LIMITED was affixed by authority of the board of Directors previously given in the presence of



[Handwritten signature]

.....
Director

[Handwritten signature]
SECRETARY

this *9th* day of *January* 199*4*5

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

[Handwritten signature: Allan Fels]

.....
Professor Allan Fels
Chairman

this *18* day of *January* 199*4*5