

FIRST NETCOM PTY LIMITED

OFFER OF UNDERTAKINGS PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

D99/11637



Background

The Australian Competition and Consumer Commission ("ACCC") has conducted an investigation into the business of First Netcom Pty Limited ("First Netcom") including the promotion of its services to consumers and distributors and potential consumers and distributors, and the promotion of its services by its distributors to consumers and potential consumers.

First Netcom is a telecommunications services provider operating pursuant to a Service Providers Class Licence as provided for under the Telecommunications Act 1991.

The Telecommunications Act requires Telstra Pty Ltd ("Telstra") to provide telecommunications services at Telstra's tariff rates (as registered with AUSTEL).

First Netcom, like other resellers, promotes itself primarily by offering to pass on to consumers, savings on the telecommunications services which those consumers use. Savings are, in the first instance, available to First Netcom because First Netcom aggregates the phone accounts of consumers who contract with it, so as to qualify for "volume discounts" under Telstra's various tariffs.

First Netcom has further promoted itself to consumers by encouraging them to become distributors.

The ACCC has alleged that First Netcom has contravened sections 52, 53(c), 53(e), 53(g) and 59 of the Trade Practices Act 1974 ("the Act") and that the ACCC has, in consequence, proper grounds to obtain injunctive relief against First Netcom in that regard.

The Commission's main allegations were that First Netcom had, through a range of conduct, misrepresented that:

- consumers would make savings in situations in which this may not be the case

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- savings would be of a higher order than was the case
- existing discounts from telecommunications carriers would continue when they would not
- bills would be received on a regular monthly basis
- distributors would make income of a higher order than was the case
- distributors would, in the near future, stand to benefit from further revenue sources as First Netcom became involved in rebilling of petrol, gas, water, electricity and pay TV.

First Netcom accordingly offers to the ACCC, as a resolution of this matter, the undertakings which are set out below, for acceptance by the ACCC pursuant to section 87B of the Act.

Undertakings

First Netcom undertakes to the ACCC as follows:

1. Except in relation to customers who received bills generated by Sharelink Communications Pty Limited, First Netcom undertakes to provide a credit to compensate its customers for any loss they have suffered as a result of any failure to provide 5% off the cost of all calls to all locations at all times prior to 30 September 1995, in accordance with its advertising and, in particular, First Netcom undertakes to credit its customers' accounts with 5% of the value of all operator connected calls, information calls (0055 and 190), ISDN, and appointment and reminder calls, for all such calls made on or before 30 September 1995. First Netcom further undertakes that these credits will be made by no later than 29 February 1996 and will be accompanied by a note explaining the reason for the credit.
2. In relation to customers who received bills generated by Sharelink Communications Pty Limited, First Netcom will, by no later than 9 February 1996, write to all of those customers, insofar as the identities and addresses

of those persons are ascertainable by First Netcom ("addressee"). In that letter, First Netcom will:

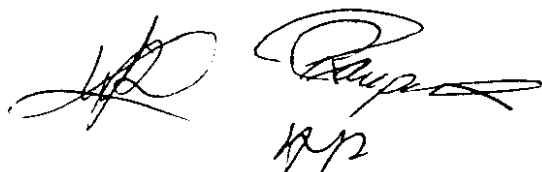
- inform the addressees that they may not have received a full discount of 5% on call costs (as offered in First Netcom's advertising) on some bills they have received in the past;
- inform the addressee that automatic credit is being arranged for any overcharging that may have occurred while First Netcom has been billing customers direct but that, prior to about July 1995, First Netcom's billing service was provided through a company called Sharelink. First Netcom is currently unable to access Sharelink's billing data, and so First Netcom requires customers' assistance so that it can provide them with the full discount promised in First Netcom's advertising;
- tell the addressees that if they send to First Netcom a copy of any Sharelink (or First Netcom) bill or bills on which they may not have received 5% discount on call costs, First Netcom will assess that bill (or those bills) and any amount owing will be credited to their First Netcom account, or (in the case of addressees who are no longer First Netcom customers) will be provided by way of a refund cheque;
- tell the addressee the date by which they must send any such bill to First Netcom for crediting or refunding to occur, which such a date being not less than 2 months from the date of sending of the letter; and
- enclose a reply-paid envelope for the sending of the copies of any bills.

On receiving any bills sent to First Netcom as a result of this letter, First Netcom will provide credits or refund cheques as promised, with such credits or refunds to be provided to relevant customers by a date not later than 6 weeks from receipt of any bill or bills from those customers. Credits in respect

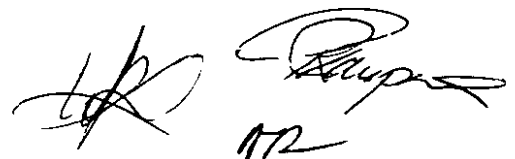
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of bills sent directly by First Netcom to customers will be made by no later than 29 February 1996.

3. First Netcom undertakes, by no later than 9 February 1996, to specifically inform all distributors and customers in writing that billing of gas, electricity, water or pay television through First Netcom will not occur in the foreseeable future. First Netcom undertakes to tell its customers that any statements it has made to this effect in the past were made on the basis of representations made to it by a third party, which have been found to be incorrect and which should not be relied on.
4. First Netcom undertakes, by no later than 9 February 1996, to specifically inform all distributors in writing that income from the sale of petrol through First Netcom will not be available in the foreseeable future. First Netcom undertakes to tell its distributors that any statements it has made to this effect in the past were made on the basis of representations made to it by a third party, which have been found to be incorrect and which should not be relied on.
5. First Netcom undertakes that it will not, by itself or through its servants or agents, represent that gas, electricity, water or pay television will be available for billing through First Netcom, unless prior to making those representations it has a contractual arrangement in place that gives it reasonable grounds for making any such representations.
6. First Netcom undertakes that it will not, by itself or through its servants or agents, represent that income from the billing of gas, electricity or water, subscription to pay television or purchase of petrol will be available through First Netcom, unless prior to making those representations it has a contractual arrangement in place that gives it reasonable grounds for making any such representation.



7. First Netcom undertakes, by no later than 9 February 1996, to tell all distributors and customers in writing that: discounts offered and advertised by First Netcom are discounts from Telstra's standard billing rates.
8. First Netcom undertakes that it will not, by itself or through its servants or agents, induce, encourage or allow any person to sign a First Netcom Order Form, Distributor Agreement or equivalent document without informing that person that: if the person is obtaining benefits and/or discounts under existing arrangements with another telecommunications company, these will be lost if that person transfers to First Netcom.
9. First Netcom undertakes that it will not, by itself or through its servants or agents, represent to a potential distributor that that person can earn a specific level of income unless First Netcom has reasonable grounds for making the representation and First Netcom will not, in any event, for a period of 2 years, represent to a potential distributor that that person can earn income in excess of double what has actually been earned by a First Netcom dealer in the preceding financial year.
10. First Netcom undertakes, by no later than 9 February 1996, to specifically inform all distributors and customers in writing of the average delay currently experienced from the end of a carrier's billing cycle until a First Netcom bill is actually received by the customer.
11. First Netcom undertakes that it will not, by itself or through its servants or agents, induce, encourage or allow any person to sign a First Netcom Order Form, Distributor Agreement or equivalent document without informing that person of:
 - (a) the delay that can in the ordinary course be expected before the person receives their first bill from First Netcom; and

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- (b) the average delay currently experienced from the end of the carrier's billing cycle until a First Netcom bill is actually received by the customer.
12. First Netcom undertakes that it will not, by itself or through its servants or agents, induce, encourage or allow any person to sign a First Netcom Order Form, Distributor Agreement or equivalent document without specifically informing that person that: the person is transferring their telephone account to First Netcom, and that, if the person subsequently wishes to transfer to another telecommunications services provider the person must give First Netcom 35 days' notice that it wishes to make the transfer and the transfer cannot be effected without First Netcom's approval. First Netcom further undertakes that such approval will not unreasonably be withheld and, unless prevented by circumstances beyond its control, First Netcom will arrange for a transfer of the customer's account to another telecommunications services provider within 35 days of the customer requesting the transfer.
13. First Netcom undertakes that it will not, by itself or through its servants or agents, induce, encourage or allow any person to sign a First Netcom Order Form, Distributor Agreement or equivalent document without specifically informing that person of the average delays that are currently being experienced in transferring telephone accounts from First Netcom to another carrier or service provider.
14. First Netcom undertakes that it will not, by itself or through its servants or agents, represent that it is sponsored or approved by, or in a joint venture with Telstra, (except where First Netcom has confirmation in writing that it is sponsored or approved by, or is in a joint venture with, Telstra) or that anyone signing persons to First Netcom is doing so as an agent for Telstra, or pursuant to a Telstra promotion.

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15. First Netcom undertakes that it will not, by itself or through its servants or agents, represent that First Netcom or its products or services are sponsored or approved by or affiliated with any organisation or person, unless it has written confirmation from that organisation or person stating that such a relationship exists.
16. First Netcom undertakes, from the date of the Commission's acceptance of these formal undertakings, to undertake a comprehensive review of all its promotional and training documents, tapes, projector slides and other material ('promotional information'). First Netcom undertakes to cease to employ all material which:
- (a) fails to comply with the undertakings given in paragraphs 13 and 14 above; or
 - (b) contains material that is deceptive or misleading or otherwise constitutes a contravention of the Act.
17. First Netcom undertakes that on completion of the review referred to above in paragraph 16, and no later than three months from the commencement of the review, it will provide a complete and current set of all official First Netcom promotional information to the Commission, together with a written summary of the changes that have been made.
18. First Netcom undertakes, within three months of the Commission's acceptance of these formal undertakings, to develop for consideration by the Commission a Trade Practices Compliance Program with the following characteristics:
- (a) the aim, to prevent so far as is reasonably possible, any contravention of the Act by First Netcom, its directors, agents or employees;
 - (b) the formal adoption by First Netcom of a policy of strict compliance with both the letter and the spirit of the Act, and the adoption and

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enforcement of effective sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act;

- (c) the appointment of an appropriately qualified person as the compliance officer, with overall responsibility for trade practices compliance;
- (d) the Compliance Program is to cover First Netcom and all its employees and agents whose duties could result in them being concerned in conduct that might breach the Act ('relevant staff');
- (e) the 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 the obvious contraventions, and can identify more complex potential trade practices problems for referral to the appropriate person within First Netcom;
 - (ii) persons with responsibilities within First Netcom's compliance infrastructure can effectively carry out those responsibilities; and
 - (iii) First Netcom's compliance officer can address more complex trade practices issues and (if that person is not legally qualified and able to give relevant advice) identify those issues which require referral to its solicitors;
- (f) the implementation of a system of random sampling of new customers, in order to ascertain whether First Netcom distributors are contravening the Act when signing up new customers;
- (g) the implementation of a system of 'blind calling' distributors, posing as potential First Netcom customers, in order to ascertain whether First

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Netcom distributors are contravening the Act when signing up new customers;

(h) enforcement of disciplinary action, including, where appropriate, suspension of income payments and termination of distributorships, where a First Netcom distributor has contravened any First Netcom document, binding on distributors, in a manner likely to cause detriment to consumers, or likely to have contravened the Act, provided that any such disciplinary action does not constitute a breach of contract and is otherwise contrary to First Netcom's obligations at law; and

(i) First Netcom undertakes to make any changes to its draft program that the Commission may reasonably require, and undertakes to implement the Trade Practices Compliance Program within one month of the date of the Commission having approved its form and content.

19. First Netcom undertakes, within three months of the Commission's acceptance of these formal undertakings, to implement a complaints handling system that complies with Australian Standard AS4269-1995 (Complaints Handling). Specifically, First Netcom undertakes to:

(a) appoint a Customer Complaints Manager and supply his/her name to the Commission within two weeks of appointment;

(b) take all reasonable steps to ensure that all present and future relevant staff notify the Customer Complaints Manager of complaints received from consumers regarding any business activity of First Netcom or its agents;

(c) take all reasonable steps to ensure that First Netcom resolves such complaints to the satisfaction of consumers as soon as possible;



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- (d) take all reasonable steps to ensure that all relevant staff notify the Customer Complaints Manager whether or not a complaint has been resolved and if not, why not;
- (e) maintain a record of complaints and the outcome of such complaints and classifying and analysing complaints received in order to allow for the identification and rectification of systematic and recurring problems.

Acknowledgments

First Netcom acknowledges that, when accepted by the ACCC, these undertakings are in the public domain and that the ACCC may draw the content of the undertakings to the attention of the public.

First Netcom further acknowledges that the giving of these undertakings and their acceptance by the ACCC does not derogate from any rights of action which any other party may have against First Netcom.

The ACCC acknowledges that, prior to implementing the procedure described in paragraph 18(g) above in respect of any particular distributor, First Netcom may inform that distributor that the procedure may be implemented, provided that the notification shall not have the effect of enabling the distributor to identify any "blind call" when it is made. The ACCC further acknowledges that First Netcom will not be required to "blind call" any dealer that has notified First Netcom that it objects to being subject to the procedure until the distributor withdraws its objection.




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IN WITNESS of these undertakings and acknowledgments the common seal of First Netcom (ACN 067 043 145) was hereto affixed by authority of the Board of Directors in the presence of:




Secretary/Director


Director *Warne Laidlaw*

This TWENTIETH day of December 1995

ACCEPTED by the Australian Competition and Consumer Commission pursuant to section 87B of the Trade Practices Act 1974



(Professor Allan Fels)
Chairman

This  day of December 1995

