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TRADE PRACTICES ACT 1974**UNDERTAKINGS TO THE TRADE PRACTICES COMMISSION GIVEN
FOR THE PURPOSE OF SECTION 87B****BY****FIRST DIRECT HOLDINGS LTD
(ACN 054 320 053) trading as The Com Store****BACKGROUND**

In the Statement of Claim filed in proceedings number G728 of 1994 in the Federal Court on 26 October 1994 a copy of which is annexed hereto and marked "A" the Trade Practices Commission has alleged that First Direct Holdings Limited ("the Respondent") advertised for sale and offered to sell mobile telephones to consumers in the manner alleged therein.

The Trade Practices Commission contends that the advertisements described in the Statement of Claim breach sections 47(6), 52, 53(e) and 53C of the Trade Practices Act 1974 ("the Act").

The Respondent acknowledges that the Trade Practices Commission is of the opinion that the Respondent has breached the Act. The Respondent has agreed to give the following undertakings for the purposes of Section 87B of the Act.

Undertakings

The Respondent undertakes for the purposes of section 87B of the Act on behalf of itself and any and all subsidiaries of the Respondent and any business entities controlled by the Respondent or its subsidiaries that:-

1. Analogue Mobile Telephones

It will send to all purchasers of analogue mobile telephones from the Respondent who purchased their mobile telephones during the period 1 August 1994 to 31 October 1994 a letter in the form annexed hereto and marked "B" within twenty

one days of the date of signing these Undertakings, or such further period as the Trade Practices Commission allows.

2. Digital Mobile Telephones

It will send to each person who agreed to purchase a digital mobile telephone from the Respondent during the period 3 October 1994 to 22 October 1994 a letter in the form annexed hereto and marked "C" together with a copy of the Digital Mobile Sale Survey in the form annexed hereto and marked "D" within twenty one days of the date of signing these Undertakings, or such further period as the Trade Practices Commission allows..

3. It will send to all persons who return the Digital Mobile Sale Survey and who have answered "No" to question 6 in that Survey a letter in the form annexed hereto and marked "E".

4. The Respondent will within twenty one days of the date of signing these Undertakings furnish to the Trade Practices Commission a list of the names and addresses of all persons referred to in paragraphs 1 and 2 above.

5. Brochure

It will make available in all its retail outlets for a period of three months from the date of signing these Undertakings the brochure currently titled "Buying a Mobile Phone?" provided it is of a content substantially similar to the draft of which is annexed hereto and marked "F". It is noted that the final form of the brochure has yet to be drafted by the Trade Practices Commission; that it should be in the final form within approximately three weeks of the date of these undertakings; and the Respondent undertakes to forward to all mobile telephone dealers listed under the heading "Mobile Telephones" in the 1994 Yellow Pages or similar in each capital city in Australia the said brochure and

a covering letter advising that copies of the brochure are available at the Trade Practices Commission in each capital city.

6. The Respondent will, within three months of the date of these orders develop and institute a three year Trade Practices Compliance program, in a form approved by the Applicant which approval shall not be unreasonably withheld, for the Respondent, all subsidiaries of the Respondent and all business entities controlled by the Respondent (“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 the Respondent, 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 Trade Practice compliance. The creation within the Group of suitable audit referral procedures to enable potential Trade Practices problems to be identified and dealt with appropriately.

(d) Coverage

The compliance program 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 obvious contraventions and can identify more complex potential Trade Practice 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 not legally qualified and able to give the relevant advice) identify issues which require referral to the Group’s legal advisers.

7. The Respondent undertakes to send details of the Trade Practices Compliance program and Education program referred to in paragraph 6 above to all mobile telephone dealers listed under the heading “Mobile Telephones” in the 1994 Yellow Pages or similar in each capital city in Australia with a cover bearing on the face thereof the title “Trade Practices Act....Trade Practices Act Compliance in the Mobile Phone Industry” and in a format to be agreed by the Commission.

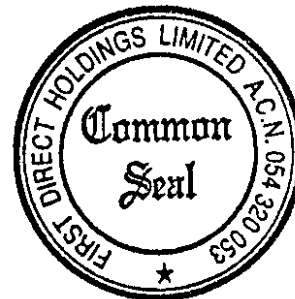
8. The Court notes the undertakings entered into by the Respondent pursuant to section 87B of the Act which are annexed hereto and marked “C”

In addition to these undertakings the Respondent agrees that the Trade Practices Commission may for the purposes of encouraging compliance with the Act publicise, where, when and to whom it wishes:

- (i) the Trade Practices Commission is of the opinion that the Respondent has contravened the Act; and
- (ii) the contents of these undertakings and the terms of the injunctions consented to by the Respondent on ~~31 October~~ ^{1 NOVEMBER} 1994. *JL*

DATED: / November 1994

The common seal of First Direct Holdings Limited was hereunto affixed by order of the Board of Directors in the presence of



[Signature]
.....
Secretary

[Signature]
.....
Director

DATED: /6 November 1994

Accepted by the Trade Practices Commission pursuant to section 87B of the Trade Practices Act 1974.

[Signature]
.....

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3 7 0 2 1994

IN THE FEDERAL COURT OF AUSTRALIA)
NEW SOUTH WALES DISTRICT REGISTRY)
GENERAL DIVISION .)

No. of 1994

FILED
23 OCT 1994
Fees Paid

BETWEEN:
TRADE PRACTICES COMMISSION
Applicant

AND:
**FIRST DIRECT HOLDINGS LTD (ACN
054 320 053) trading as The Com Store**
Respondent

STATEMENT OF CLAIM

1. The Applicant is a body corporate established by Section 6A of the Trade Practices Act 1974 ("the Act") and is entitled to sue in its corporate name.
2. The Respondent is and at all material times was:
 - (a) a body corporate duly incorporated pursuant to the Corporations Law;
 - (b) liable to sue and be sued in its corporate name;

Australian Government Solicitor and Solicitor for the Applicant

Address: 25th Floor, Piccadilly of Sydney, 133 Castlereagh Street,
SYDNEY NSW 2000 DX 444 SYDNEY

Postal Address: PO Box 2727, GPO SYDNEY NSW 2001

Address for Service: C/- 25TH FLOOR, PICCADILLY OF SYDNEY, 133
CASTLEREAGH STREET,
SYDNEY NSW 200 DX 444 SYDNEY

Contact Officer: Felicity Booth Telephone: (02) 581 7530
Facsimile: (02) 581 7528

- (c) a trading corporation within the meaning given to that term by the Act, formed within the limits of Australia; and
 - (d) a corporation to which the provisions of the Act apply.
3. At all material times the Respondent carried on business and was engaged in trade or commerce, in the telecommunications industry, inter alia, as a supplier of mobile telephone services and equipment to customers in Australia under the business name The Corn Store.

PART V CONDUCT

4. The Respondent caused to be published in the Sydney Morning Herald on 6 October 1994 an advertisement headed "\$600 OFF DIGITAL MOBILE PHONES" A copy of this advertisement is annexed and marked "A".
5. The said advertisement contains the following representations:-
- (a) an Ericsson 337 can be purchased for \$600 off.
 - (b) a Nokia 2110 can be purchased for \$600 off.
 - (c) a Motorola 5200 can be purchased for \$399, saving \$600.
 - (d) A Motorola 7200 can be purchased for \$599, saving \$600.
6. The said advertisement also contains the statement that "conditions apply while stocks last".
7. The making of the representations referred to in paragraph 5 constituted conduct by the Respondent in trade or commerce.

8. (a) Such conduct was misleading or deceptive or likely to mislead or deceive, contrary to Section 52 of the Act, and
- (b) The representations so made were false or misleading with respect to the price of the digital mobile telephones contrary to section 53(e) of the Act.

PARTICULARS

- A. The mobile telephones described cannot be purchased for the amounts specified in bold print: a minimum of \$1,066.00 must also be paid to the Respondent for connection to a mobile telephone service network.
 - B. The conditions that consumers must also incur a minimum payment of \$1,066.00 to be connected to a mobile telephone service network is not indicated.
9. On or about 18 October 1994 the Respondent offered to supply a digital mobile telephone to Paul Shevtzoff for \$599.00 on condition that he enter into a twelve month contract with a minimum call payment of \$50.00 per month; and an access fee of \$32.00 per month.

PARTICULARS

The said offer was made by Jamie Grant at The Com Store at North Sydney in the State of New South Wales on behalf of the Respondent with respect to a Motorola 7200 digital phone.

10. The Respondent caused to be published in the Daily Telegraph Mirror on 11 October 1994 an advertisement headed "\$600 OFF DIGITAL MOBILE PHONES" a copy of this advertisement is annexed hereto and marked "B".

11. The said advertisement contains the following representations:
 - (a) an Ericsson 337 can be purchased for \$600 off.
 - (b) a Nokia 2110 can be purchased for \$600 off.
 - (c) a Motorola 5200 can be purchased for \$399, saving \$600.
 - (d) A Motorola 7200 can be purchased for \$599, saving \$600.
12. The said advertisement also contains the statement that the offers to purchase the mobile telephones at the prices described in paragraph 10 are subject to connection to "First Direct" for a minimum of 12 months, with minimum call charges of \$50.00 every four weeks and access charges of \$32.00 every four weeks.
13. The total minimum cost for connection to "First Direct" as described in paragraph 11 for 52 weeks is \$1,066.00.
14. The making of the representations referred to in paragraph 11 constituted conduct by the Respondent in trade or commerce.
15.
 - (a) Such conduct was misleading or deceptive or likely to mislead or deceive, contrary to Section 52 of the Act; and
 - (b) The representations so made were false or misleading with respect to the price of the digital mobile telephones, contrary to Section 53(e) of the Act.

PARTICULARS

- A. The mobile telephones described cannot be purchased for the amounts specified in bold print: a minimum of \$1,066.00 must also be paid to the Respondent for connection to a mobile telephone service network.

- B. The conditions that consumers must also incur a minimum payment of \$1,066.00 to be connected to a mobile telephone service network is not indicated with sufficient prominence.
16. On or about 11 October 1994 the Respondent caused to be broadcast on radio station 3MMM in Melbourne in the State of Victoria an advertisement. A transcript of this advertisement is annexed hereto and marked "C".
17. The said advertisement included the statement "Better. I got a wicked deal. Only three hundred and ninety-nine dollars". This statement is a representation that the Motorola hand held mobile telephone can be purchased for payment of only \$399.00.
18. The representation referred to in paragraph 17 was misleading or deceptive or likely to mislead or deceive because the Motorola could only be purchased by payment to the Respondent of \$399.00 plus a minimum of \$1,066.00 for connection to a mobile telephone service network.
19. The advertisements described in annexures "A", "B" and "C" were made in trade or commerce in connection with the supply or possible supply or promotion of the supply of mobile telephones and mobile telephone services and the prices quoted for the purchase of such telephones and services represents part only of the consideration for such telephones and services and the advertisements and broadcast do not specify the cash price for such telephones and services, contrary to Section 53C of the Act.

PARTICULARS

- A. In the advertisements reproduced in Annexure "A" and "B" the cash price for what is being sold is not specified.

- B. In the advertisements reproduced in Annexure "A" and "C" the condition that a minimum amount of \$1,066.00 must be paid to the Respondent to obtain access to a mobile telephone service network is not stated.
- C. In the advertisement reproduced in annexure "B" the cash price for the Motorola 7200 mobile telephone, being \$1,465.00, is not stated.

PART IV CONDUCT

20. On or about 18 August 1994 the Respondent offered to supply an analogue mobile telephone to Paul Shevtzoff on condition that he enter into a service contract or arrangement with the telecommunications service provider known as Optus Mobile Pty Ltd ("Optus") in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made by "Spiro" at The Com Store Sydney in the State of New South Wales on behalf of the Respondent with respect to a Motorola analogue mobile telephone.

21. On or about 20 August 1994 the Respondent offered to supply an analogue mobile telephone to Paul Shevtzoff on condition that he enter into a service contract or arrangement with Optus in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made at Sydney in the said state by Kevin Teo on behalf of the Respondent with respect to an analogue mobile telephone.

22. On or about 31 August 1994 the Respondent offered to supply an analogue mobile telephone to Paul Shevtzoff on condition that he enter into a service contract or arrangement with Optus in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made at Sydney in the said state by Terry O'Halloran on behalf of the Respondent with respect to an analogue mobile telephone.

23. On or about 1 September 1994 the Respondent offered to supply an analogue mobile telephone to Patricia Lampert on condition that she enter into a service contract or arrangement with Optus in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made at Adelaide in the State of South Australia orally by telephone by "Peter" at The Com Store located at Unit 1, 224 Main North Road, Prospect on behalf of the Respondent with respect to a Motorola or a Nokia priced from \$499.00 to \$645.00.

24. On or about 31 September 1994 the Respondent offered to supply an analogue mobile telephone to Cameron Stewart on condition that he enter into a service contract or arrangement with Optus in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made orally by Wendy Brewin at The Com Store located at Queen Street Brisbane in the State of Queensland on behalf of the Respondent with respect to an analogue mobile telephone.

25. On or about 12 October 1994 the Respondent offered to supply an analogue mobile telephone to Paul Shevtzoff on condition that he enter into a service contract or arrangement with Optus in connection with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made at Sydney in the said state by Bill Aldea on behalf of the Respondent with respect to a Motorola 9760 priced at \$499.00

26. On or about 16 October 1994 the Respondent offered to supply an analogue mobile telephone to Paul Shevtzoff on condition that he enter into a service contract or arrangement with Optus with the purchase of the analogue mobile telephone.

PARTICULARS

The said offer was made at Adelaide in the State of South Australia by telephone by "Alex" at The Com Store located at Unit 1, 224 Main North Road, Prospect, on behalf of the Respondent with respect to a Motorola 9760 priced at \$499.00.

27. By reason of the acts and conduct referred to in paragraph 4 to 19 the Respondent has breached sections 52, 53(e) and 53C of the Act.
28. By reasons of the acts and conduct referred to in paragraphs 20 to 26 the Respondent has engaged in the practice of exclusive dealing and has thereby contravened section 47(6) of the Act.

29. The Applicant claims the relief specified in the Application.

AUSTRALIAN GOVERNMENT SOLICITOR
Per:

J. G. Clark.

.....
Solicitor for the Applicant

"B"

Dear customer,

We write to you as a purchaser of an analogue mobile phone from the Com Store.

The Trade Practices Commission has expressed concern that as a result of representations made by us, some purchasers would be under the impression that their phones could only be connected to Optus.

The Com Store recommends and promotes connection to Optus for analogue mobile service. However, the Trade Practices Commission has requested that we remind you that any analogue phone purchased from the Com Store may be connected to either to Optus or Telecom.

If you wish to change your connection you may do so by telephoning Optus on (number).

'C'

Dear Customer,

The Trade Practices Commission ("TPC") has expressed concern about aspects of our recent digital mobile sales promotion in which you were one of our many purchasers. The TPC has asked us to conduct a customer satisfaction survey.

Accordingly, we would be grateful if you would take a few minutes to fill out the enclosed questionnaire. The results of this questionnaire will be carefully considered by the Com Store and the TPC.

etc.

"D"

DIGITAL MOBILE

SALE SURVEY

Name:

Address:

Digital phone no. 0411 1_____

1. How did you hear of the Com Store digital mobile promotion?
Radio Advertisement
Newspaper Advertisement
Recommendation
Other (please specify)
2. Did you compare competitor's prices and service before purchasing you
Digital Mobile? YES NO
3. From which Com store did you purchase?
4. Were you happy with:
The price of the phone
The price of the First Direct Service package
The pre-sale service of First Directs representative who served you
The speed of connection to the digital network
5. Were the details of the service contract explained to you to your
satisfaction prior to your purchase?
6. Were you aware that minimum 4 weekly costs of \$82 (service fee \$32
and calls minimum \$50) would apply for 12 months?

“E”

Dear

Thank you for returning our recent Digital Mobile Sale Survey.

We are disappointed to learn that you did not fully understand all of the costs of your digital service contract over its 12 month period.

To make amends, we are pleased to offer you the option of cancelling your agreement or changing to any of our current plans, without any transfer fee or minimum time commitment. Alternatively you can cancel your agreement and obtain a full refund on the purchase price of your phone.

If you wish to take up either of those options, please contact (name) on (phone).

Buying a mobile phone ?

Buying a mobile phone is not as easy as it looks — and there are some traps for the unwary.

There are many competing brands and models, three rival network providers (Telecom, Optus and Vodafone) and two systems (analogue and digital).

New models, with new features and different deals are hitting the market all the time. The coverage and features of the networks are improving. Network rates and conditions are many, varied and subject to change.

How do you pick a winner — or at least avoid a loser ?

What to watch for

The Trade Practices Commission has investigated mobile phone sellers and network providers for alleged breaches of the Trade Practices Act and stopped a variety of unfair practices.

These have mainly involved allegations of false or misleading representations about prices or performance characteristics of phones or networks.

Pricing

- Sometimes it is not clear whether prices quoted are the full price, the deposit or just an instalment. Make sure that you are told the full price, *in addition to* deposit and instalment amounts.
- If a 'rebate' on calls is offered, make sure that it is clear who will pay it. If it is to be paid by the network provider check this directly with them *before* you sign.
- Working out whether one network will be cheaper than another is not always straightforward. Rates that look lower at first may not be the best deal for you, as the charges will depend on your usage patterns.

Conditions

- The documents you have to sign may not include *all* the contractual conditions you are agreeing to. Make sure that you have been given *all* the relevant conditions and read them *before* you sign. Keep a copy.
- Sometimes salespeople will suggest that you sign a network agreement when you buy the phone. If you do this without first 'shopping around' you may pay more than you need for your phone/network combination.

Servicing

- For most users of mobile phones the availability, cost and turnaround time of repairs is even more important than initial purchase price.
- Ask about servicing arrangements *before* you buy. If possible, check with other phone users and independent repairers.
- Check that the phone is AUSTEL-approved. All mobile phones must carry an AUSTEL permit number. Most will also have the AUSTEL 'tick' on the packaging or on a sticker or tag on the phone itself.

[Graphic to be included here.]

How to buy

Prevention is always better than cure. If you think about your telephone needs, shop around and check the important facts *before* you buy, you will improve your chances of a good deal.

The best way to choose the right mobile phone/network combination for you is the same as for anything else you buy.

Work out your needs.

How often and when will you use the phone ?

Where are you likely to make and receive calls ?

Would you use the additional services offered by some network providers ?

Shop around.

The market for mobile phones and for mobile phone network services is competitive and expanding and the technology is evolving quickly. There are many different deals available.

How do you know when salespeople are giving you *all* the information you need to make an informed decision ? How do you know the deal they offer is the right one for you ?

The best protection against rip-offs and bad deals starts with you. Shopping around, asking questions, comparing prices, conditions and claims can save you dollars, inconvenience and frustration.

Check the facts.

Salespeople should give you accurate and full information — but there are some important points you should try to check yourself .

Read the AUSTEL leaflet '*There is a mobile phone system that's right for you.*' You can get it directly from AUSTEL and it is usually available where mobile phones are sold. The leaflet explains important practical differences between the analogue and digital systems.

Check the network coverage maps published by the network providers. Are the areas where you will be making or receiving calls currently serviced? Check with the dealer and the network provider as to local conditions that will affect transmission and reception.

If claims about particular features of a mobile phone are important to your decision to buy, ask for confirmation of them in writing. If possible check with other suppliers.

If claims about particular features of the network service are important to your decision to buy, check them directly with the network providers and/or AUSTEL.

Read and understand *all* the conditions of any contract *before* you sign. For example, will you be prevented from swapping between networks for a time? Keep a copy of any contract you sign.

Check claims about tax deductibility with your accountant and/or the Taxation Office.

If the dealer who sells you a phone arranges access to a network he or she will usually receive a commission from the network provider. This may influence the dealer's judgement on what is the best network for you.

If you have a problem

The Commission is interested in your complaints about misleading and deceptive conduct and anticompetitive arrangements — about mobile phones and networks or any other product or service.

What do you do if you think you've have been ripped-off?

First, talk to the business which has given you the problem. Give them the facts and suggest a realistic solution. Most problems can be resolved this way.

Still got a problem? Phone or fax your State or Territory Consumer Affairs agency or the nearest Trade Practices Commission office. The numbers are on page —

TEL:

31 Oct 94 12:17 No.011 P.05
928 P10 OCT 15 94 11:10

Contact details:

Trade Practices Commission

State and Territory Consumer Affairs Agencies

AUSTEL - Australian Telecommunications Authority

Possible inclusions for 'boxes':

A dealer told customers that they would get a rebate if they were connected to a particular network. However, the dealer did not disclose that rebate would be calculated on an average of calls for a particular period and would be paid as a deduction from subsequent phone bills over two years.

One advertisement stated that 'unlike other suppliers we do not ask you to commit yourself to airtime. In fact, the actual conditions of sale stated that all prices quoted were subject to connection to a particular network for 12 months, with a 3 month notice period (making it 15 months all up).

Some dealers have advertised discounts from the recommended retail price, even though recent market experience suggests that few suppliers actually charge the recommended retail price.

Another dealer advertised that customers could try the phone for a time and return it if they were not happy with it. In fact stringent conditions applied to this offer but were not spelled out in the advertisement.

A dealer claimed that rental of a mobile phone from that particular outlet would attract a 100% tax rebate. In fact the Tax Office has strict conditions covering deductions for phone expenses and these don't depend on where you buy.

A network provider made the mistaken representation of 'No more dropouts' in relation to a digital service. In fact dropouts can occur with either analogue or digital systems.