



Australian  
Competition &  
Consumer  
Commission

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# NEWS RELEASE

Attn: Consumer, telecommunications writer

## ACCC alleges hidden contracts, misleading conduct in telecommunications

The Australian Competition and Consumer Commission has instituted proceedings in the Federal Court of Australia against 28 parties, including telecommunications companies and their related companies, finance companies and individuals, alleging exclusive dealing (third line forcing) and misleading and deceptive conduct.

The 'bundled services deals' business model (see below) to provide telecommunications services and equipment is common in the telecommunications industry. The total dollar value of such deals is estimated to be in the tens of millions. The deals target small business.

The telecommunications and related companies named as respondents in the proceedings are members of the Clear Communications, Axis Telecoms and WorldTel groups and National Telecoms Group Pty Ltd. A complete list of the respondents and their alleged conduct is attached.

It is alleged the telecommunications companies used a "bundled services deals" business model. Under the deals the company would enter into a contract with a small business to provide it with telecommunications services and call credits to cover payments for what some customers thought was "free" equipment. Whereas, it is alleged, the equipment was supplied to customers under rental agreements by finance companies that were not related to the telecommunications companies.

The ACCC alleges that the bundled services arrangement is exclusive dealing, in breach of section 47(6) of the Trade Practices Act 1974.

It is also alleged that in inducing the small businesses to enter into bundled services deals, the telecommunications companies made some or all of the following misrepresentations:

- the equipment provided under the deal is free
- total charges for telecommunications services will not exceed either a stated amount or the customers' previous charges
- total charges under the bundled services deal will not exceed a specified amount per month
- the only contractual commitment being made by the customer is with the telecommunications company
- the price of calls will be lower than that of the customer's existing provider
- fixed line services will be ported to the telecommunications company within a short period of time, and/or
- the telecommunications company will supply mobile services using the customer's existing mobile carrier.

The ACCC alleges that statements of that type misled customers in breach of sections 52, 53(e) and 53(g) of the Trade Practices Act 1974 and/or sections 12DA(1), 12DB(1) (e) and (12DB(1)(g) of the Australia Securities and Investments Commission Act 2001.

The ACCC has also commenced action against the telecommunications companies over the alleged misrepresentations.

The ACCC acknowledges the assistance of ASIC in providing it with a delegation allowing it to commence proceedings over the alleged breaches of the Australia Securities and Investments Commission Act.

In addition to the claims against the telecommunications companies, the ACCC alleges that:

- three finance companies, Australian Integrated Finance Pty Ltd, CIT Group (Australia) Ltd and Enterprise Finance Solutions Pty Ltd
- a number of directors and key employees of some of the telecommunications companies, as referred to in the attached list of respondents, and
- the director of National Telecoms Group Pty Ltd, Mr Tony Hakim,

were knowingly concerned in the alleged exclusive dealing.

National Telecoms Group Pty Ltd was previously a respondent to proceedings brought by the ACCC over misleading and deceptive conduct involving bundled services deals in 2003.

The ACCC is seeking court orders including:

- pecuniary penalties against certain respondents
- declarations that certain respondents engaged in exclusive dealing or were knowingly concerned in the exclusive dealing
- injunctions restraining certain respondents from engaging in the same conduct in the future
- orders requiring certain corporate respondents to implement a trade practices law compliance program
- orders requiring corporate respondents to publish corrective advertisements in newspapers and on their websites
- orders requiring each finance company to write to any customer who entered into bundled services deals advising them of their rights under section 73 of the Trade Practices Act 1974 before it commences any proceedings against the customer, and
- costs.

The matter has been listed for a directions hearing in the Federal Court, Sydney on 17 October 2008 before Justice Bennett.

### Media inquiries

- Ms Lin Enright, Director, Media Unit, (02) 6243 1108 or 0414 613 520

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### ACCC v Axis Telecoms, WorldTel and others

Table of Respondents and alleged breaches

No.	Respondent	Alleged Conduct
1	Link Solutions Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms

2	Service LS Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
3	Axis Telecoms Pty Ltd	<ul style="list-style-type: none"> <li>• Exclusive dealing</li> <li>• Misleading or deceptive conduct</li> <li>• False or misleading representation with respect to the price of a service</li> <li>• False or misleading representation concerning the existence or effect of a condition of a contract</li> </ul>
4	Service AT Pty Ltd	<ul style="list-style-type: none"> <li>• Exclusive dealing</li> <li>• Misleading or deceptive conduct</li> <li>• False or misleading representation with respect to the price of a service</li> <li>• False or misleading representation concerning the existence or effect of a condition of a contract</li> </ul>
5	Sonofon Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
6	Service SO Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
7	Telecom One Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
8	Service TO Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
9	George Tawaf (Director of Axis Telecoms Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in, aided and abetted or procured misleading or deceptive conduct</li> <li>• Was knowingly concerned in, aided and abetted or procured false or misleading</li> </ul>

		<p>representation with respect to the price of a service</p> <ul style="list-style-type: none"> <li>• Was knowingly concerned in, aided and abetted or procured false or misleading representation concerning the existence or effect of a condition of a contract</li> </ul>
10	Mark Nesbitt (Director of Axis Telecoms Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in, aided and abetted or procured misleading or deceptive conduct</li> <li>• Was knowingly concerned in, aided and abetted or procured false or misleading representation with respect to the price of a service</li> <li>• Was knowingly concerned in, aided and abetted or procured false or misleading representation concerning the existence or effect of a condition of a contract</li> </ul>
11	John Masia (General Manager of Axis Telecoms Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in exclusive dealing by Axis Telecoms</li> </ul>
12	Barry Kennedy (Disputes Manager for Axis Telecoms Pty Ltd)	Was knowingly concerned in exclusive dealing by Axis Telecoms
13	WorldTel (Aust) Pty Ltd	<ul style="list-style-type: none"> <li>• Exclusive dealing</li> <li>• Misleading or deceptive conduct</li> <li>• False or misleading representation with respect to the price of a service</li> <li>• False or misleading representation concerning the existence or effect of a condition of a contract</li> </ul>
14	WorldTel Corporation (Victoria) Pty Ltd	Was knowingly concerned in exclusive dealing by WorldTel

15	Skylink Communications Pty Ltd	<ul style="list-style-type: none"> <li>• Was knowingly concerned in exclusive dealing by WorldTel</li> <li>• Misleading or deceptive conduct</li> <li>• False or misleading representation with respect to the price of a service</li> <li>• False or misleading representation concerning the existence or effect of a condition</li> </ul>
16	Romeo Wehbe (Director of WorldTel Corporation Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by WorldTel</li> <li>• Was knowingly concerned in exclusive dealing by WorldTel</li> </ul>
17	Manoel Wehbe (Director of WorldTel Corporation Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by WorldTel</li> <li>• Was knowingly concerned in exclusive dealing by WorldTel</li> </ul>
18	Fakhr Fakhr (Director of WorldTel Corporation Pty Ltd)	<ul style="list-style-type: none"> <li>• Procured exclusive dealing by WorldTel</li> <li>• Was knowingly concerned in exclusive dealing by WorldTel</li> </ul>
19	Joseph Ayoub (Finance and Operations Manager of WorldTel Corporation Pty Ltd)	Was knowingly concerned in exclusive dealing by WorldTel
20	Australian Integrated Finance Pty Ltd	<ul style="list-style-type: none"> <li>• Was knowingly concerned in or aided and abetted exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in or aided and abetted exclusive dealing by WorldTel</li> </ul>
21	Enterprise Finance Solutions Pty Ltd	<ul style="list-style-type: none"> <li>• Was knowingly concerned in or aided and abetted exclusive dealing by Axis Telecoms</li> <li>• Was knowingly concerned in or aided and abetted exclusive dealing by WorldTel</li> </ul>
		Was knowingly concerned in or

22	CIT Group (Australia) Pty Ltd	aided and abetted exclusive dealing by Axis Telecoms
23	Queensland Communications Company Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
24	Service QCC Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms
25	Clear Communications (EurAst) AB	Was knowingly concerned in or counselled or procured exclusive dealing by Axis Telecoms
26	Clear Telecoms (Aust) Pty Ltd	Exclusive dealing
27	Anthony Hakim (Director of National Telecoms Group Pty Ltd and Clear Communications (EurAst) AB))	Was knowingly concerned in exclusive dealing by Axis Telecoms
28	National Telecoms Group Pty Ltd	Was knowingly concerned in exclusive dealing by Axis Telecoms