



Australian Competition & Consumer Commission

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Our Ref: C2002/1543
Contact Officer: Danielle Staltari
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13 November 2002

Mr Bruce Lloyd
Clayton Utz
Level 34, No.1 O'Connell Street
SYDNEY NSW 2000

Dear Mr Lloyd

Notification of Exclusive Dealing – Virgin Mobile (Australia) Pty Ltd (N31198)

I refer to the above third line forcing notification lodged by Virgin Mobile (Australia) Pty Ltd (Virgin Mobile) on 21 October 2002 with the Australian Competition and Consumer Commission (the Commission). Legal immunity from the *Trade Practices Act 1974* (the Act) commenced on 4 November 2002. These notifications have been placed on the Commission's public register.

This notification concerns the following proposed conduct:

1. Offers by Virgin Mobile and the supply by Virgin Mobile pursuant to such offers, of telecommunication services at a discounted price on condition that the customer purchases, or has purchased, goods or services from Community Program Members (which may include related bodies corporate of Virgin Mobile); and
2. Offers by Community Program Members and the supply by Community Program Members pursuant to such offers, of various consumer goods and services at a discounted price on condition that the customer has acquired or will acquire telecommunication services from Virgin Mobile.

The Community Program Members include Virgin Music, In2Music, Virgin Megastore, The Strathfield Group, Harvey Norman, Vintage Cellars and Video Ezy.

As you may be aware, notification has the effect of affording immunity to the person notifying (the Act does not enable a person to notify on others' behalf).

Please be advised that any immunity afforded as a result of this notification does not extend to the Community Program Members that supply various goods and services at a discounted



price on condition that the customer has acquired or will acquire telecommunication services from Virgin Mobile.

Whilst I would not expect the Commission to take action in relation to the conduct notified on the basis of the information you have provided (and without the benefit of market inquiries), it would be open for third parties to take action against third line forcing by those Community Program Members.

As such, the Community Program Members may wish to consider lodging separate third line forcing notifications in order to obtain immunity from the exclusive dealing provisions of the Act.

I also note that paragraph (f) on page 9 of your submission. This paragraph states:

“VMA, Virgin blue and Virgin Music Group (Australia) Pty Ltd are members of the Virgin Group. The notified conduct should be permitted to allow the Virgin group to offer airline services, music and video products and telecommunication services and offer a discount for this “package”, as well as to offer the products separately at the prices which would otherwise apply to the products”.

Please be advised that this notification only provides immunity for the supply of telecommunication services by Virgin Mobile on condition that the customer purchases, or has purchased goods or services from Community Program Members (which may include related bodies corporate of VMA). This notification does not provide immunity for exclusive dealing conduct which Virgin Blue or Virgin Music Group (Australia) Pty Ltd intend to engage in.

I note that you provide an example of the proposed conduct which Virgin Mobile proposes to engage in. I understand that Virgin Mobile proposes to offer a credit to its existing customers if they acquire airline services from Virgin Blue by booking their airline ticket through a link on Virgin Mobile's website to Virgin Blue's online booking system. In order to ensure that immunity afforded by this notification extends to the supply of all products involved in this arrangement, I suggest that you inform the Commission of the specific products involved in the arrangement, so that the Commission may update its register.

On the basis of the information that you have provided, it is not intended that further action be taken in relation to the notification lodged by Virgin Mobile at this stage.

Please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

Overpayment of fee

A fee of \$1000 was paid in respect of the notification lodged by Virgin Mobile under section 93(1) of the Act for conduct pursuant to section 47(6) of the Act. The fees payable to the Commission for applications or notices are detailed in the Trade Practices Regulations. A fee of \$100 is payable by proprietary limited companies.

I will forward a reimbursement for \$900 at a later date once the cheque has been processed by the Commission.

If you wish to discuss any aspect of this matter, please contact Danielle Staltari on (02) 6243 1362.

Yours sincerely

A handwritten signature in black ink, appearing to be 'T. Grimwade', written in a cursive style.

Tim Grimwade
General Manager
Adjudication Branch