

21 November 2002

Mr Roger Featherston  
Partner  
Mallesons Stephen Jaques  
Level 60, Governor Phillip Tower  
1 Farrer Place  
SYDNEY NSW 2000

**By facsimile: 02 9296 3999**

Dear Mr Featherston

**Third line forcing notifications N31170 and N31171 lodged by Telstra Corporation Limited and Telstra Pay TV Pty Limited**

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission ('the Commission') on 15 July 2002.

The conduct is described in those notifications as involving:

Telstra Pay TV initially proposes to offer and supply FOXTEL's subscription television services to retail customers who wish to participate in Telstra's Rewards Options programme... The subscription television services offered and supplied by Telstra Pay TV will be another alternative in the Rewards Options programme. A customer, therefore, will be offered a 5% discount off eligible services, if the customer acquires a fixed-line telephony service which is pre-selected to Telstra and any one of the following services from Telstra or Telstra Pay TV (as the case may be) on a single bill:

- (i) mobile telephony services;
- (ii) internet services; or
- (iii) subscription television services.

If the customer acquires a fixed-line telephony service which is pre-selected to Telstra Corporation Limited and any two (or more) of mobile telephony services, internet services or subscription television services from Telstra or Telstra Pay TV (as the case may be) on a single bill, the discount would be 10% off eligible services.

Telstra Pay TV would not offer subscription television services to a retail customer unless the customer agrees to acquire some other telecommunications services (and probably at least a fixed-line telephony service pre-selected to Telstra) from Telstra.

Legal immunity consequent upon the notification commenced on Monday 29 July 2002.

The Commission has made inquiries into this matter and in the course of doing so has made numerous requests of Telstra for information, and has received information from Telstra in response to these requests and from interested persons generally.

On the basis of the information that the Commission has received from Telstra and others, and on the basis of the Commission's assessment of the current market conditions, the Commission does not intend to take any action in relation to the notified conduct at this stage. It should be noted however 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.

The Commission notes Telstra's advice in its letter of 29 October 2002 that:

Telstra would be prepared to confine its maximum discount on the subscription television services component of the Rewards Options programme, to a level of 10%, calculated by reference to the regular monthly subscription revenue.

Telstra would have the right to increase the maximum level of discount, however, if Telstra were to provide the Commission with at least 30 days prior notice in writing.

While the Commission does not object to Telstra giving 30 days notice of a proposed increase to this discount, for completeness the Commission advises that it would expect that this notice would be given by way of a further formal notification.

In assessing the current notifications, the Commission took the view that the level of the discounts to be offered is an important element of the relevant conduct. In those circumstances, the Commission's position is that Telstra should formally notify any proposed increase or decrease to the level of these discounts, as it is only the conduct as notified that can obtain immunity consequent on this notification. The Commission would consider its position in respect of any further notifications as and when they were received.

This letter has been placed on the Commission's public register. If you wish to discuss any aspect of this matter, please contact me on 03 9290 1914.

Yours sincerely

Michael Cosgrave  
General Manager  
Telecommunications