



**Australian
Competition &
Consumer
Commission**

Our Ref: N92352, N92353 & N92354
Contact Officer: Tina Pigliardo
Contact Number: (03) 9290 1481

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602

ph (02) 6243 1111
fax (02) 6243 1199

www.accc.gov.au

21
~~20~~ April 2006

Ms Trudi Bean
Corporate Counsel
SingTel Optus Pty Ltd
PO Box 1
NORTH SYDNEY NSW 2059

Dear Ms Bean

Optus Mobile Pty Limited (Optus Mobile), Optus Internet Pty Limited (Optus Internet) and Optus Networks Pty Limited (Optus Networks) N92352, N92353 & N92354 notifications

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) by Optus Mobile, Optus Internet and Optus Networks on 27 January 2006. The notifications have been placed on the ACCC's public register.

Optus has described the conduct as follows:

...Optus Mobile/Internet/Networks and Commonwealth Bank of Australia (CBA) are undertaking a joint marketing initiative whereby certain CBA cardholders will receive either 3,000 Commonwealth Awards Bonus Points (broadband & telephony), or 3,000 Commonwealth Awards Bonus Points (mobile) and an extra 1,000 Commonwealth Award Bonus Points (both broadband/telephony & mobile) when the cardholder:

- Enters into a minimum 24 month contract with Optus Internet & Networks and/or Mobile, for the supply of either broadband internet & fixed line telephony services and/or mobile services;



- Makes initial payment for these services using their Commonwealth Awards credit card.

...

Legal immunity conferred by these notifications commenced on 10 February 2006.

On the basis of the information provided, it is not intended that further action be taken in this matter at this stage.

Whilst I have decided not to make further inquiries concerning the notified conduct, I would like to bring to your attention an issue arising from your notifications.

As you are aware, a notification has the effect of affording immunity to the person notifying the conduct. The *Trade Practices Act 1974* (the Act) does not appear to enable a person to notify on others' behalf. On the basis of the information contained in your submission of 27 January 2006, it appears that CBA may be engaging in the conduct that may constitute third line forcing.

On the basis that CBA has not specifically notified under section 93 of the Act, in my view there is some legal doubt as to whether the immunity afforded by the notification extends to CBA. CBA may therefore wish to consider whether it needs to lodge a separate notification. I would request that you advise CBA of this.

Please note that the ACCC may act to remove the immunity afforded by these notifications 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.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Tina Pigliardo on (03) 9290 1481.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Scott Gregson', with a large, sweeping loop at the end.

Scott Gregson
General Manager
Adjudication Branch