

# MALLESONS STEPHEN JAQUES



Attention Ms Tina Pigliardo  
Adjudication Branch  
Australian Competition and  
Consumer Commission  
470 Northbourne Avenue  
Dickson ACT 2602  
**By fax: (02) 6243 1199**

15 December 2006

Caroline Coops  
Partner  
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Dear Ms Pigliardo

### **Third line forcing notifications (N92702 & N92703) lodged by Telstra Corporation Limited ("Telstra") and American Express Australia Limited ("American Express")**

We refer to your letter dated 1 December 2006 regarding the above, which was postmarked 5 December 2006 and received by us on 7 December 2006.

In response to the questions in your letter:

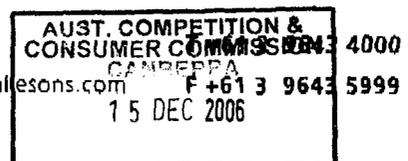
- 1 In response to Questions 1 and 2, we are instructed that neither Telstra nor American Express have any present intention of pursuing any joint marketing initiative that involves the supply of a product only on condition that the customer also acquires one or more products from the other party (or a refusal to supply a product in these circumstances).

Rather, to the extent that joint marketing initiatives between Telstra and American Express makes supply of any goods or services conditional on the customer also acquiring one or more products from the other party, the parties intend that the conditional supply will typically be of a discount, allowance, rebate or credit in relation to a product, rather than of a product itself.

- 2 In response to Questions 3 and 4, we note that the parties have agreed to undertake a joint marketing initiative under which American Express is offering to supply 10,000 American Express Membership Reward™ points to customers who acquire a mobile handset and service from Telstra.

Following are examples of other possible joint marketing initiatives that the parties envisage may be undertaken in the future:

- (a) an offer by American Express to waive certain card fees for customers who acquire a mobile handset and service from Telstra. Customers will be able to



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acquire the relevant card from American Express without acquiring a Telstra product (and vice versa), although they would not then be eligible to receive waived fees; and

- (b) an offer by Telstra to supply a specified account credit to customers who acquire a mobile handset and service from Telstra and an American Express card from American Express. Again, customers will be able to acquire the relevant handset and service from Telstra without acquiring an American Express card (and vice versa) but they will not receive the account credit.

We trust that this response addresses any concerns of the ACCC. Please contact me if you would like to discuss or require any further information.

Yours faithfully

