



**Australian
Competition &
Consumer
Commission**

Our Ref: N92702 & N92703
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

19 December 2006

Ms Caroline Coops
Partner
Mallesons Stephen Jacques
Level 50, Bourke Place
600 Bourke Street
MELB VIC 3000

Dear Ms Coops

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

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 16 November 2006. I also refer to a request for further information on 1 December 2006 and your response to this request on 15 December 2006.

American Express (N92703) has described the conduct as follows:

From time to time, American Express intends to:

- i. supply or offer to supply an American Express product (including supplying or offering to supply an American Express product at a particular price), or give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of an American Express Product, to customers on the condition that the customer will acquire or agrees to acquire one or more Telstra products; or
- ii. refuse to supply an American Express Product (including refusing to supply an American Express Product at a particular price), or refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of an American Express Product to customers for the reason that the customer has not agreed to acquire one or more Telstra Products.

Telstra (N92702) has described the conduct as follows:

From time to time, Telstra intends to:

- i. supply or offer to supply a Telstra Product (including supplying or offering to supply a Telstra Product at a particular price), or give or allow or offer to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of a Telstra Product, to customers



- on the condition that the customer will acquire or agrees to acquire one or more American Express Products; or
- ii. refuse to supply a Telstra Product (including refusing to supply an Telstra Product at a particular price), or refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of a Telstra Product to customers for the reason that the customer has not agreed to acquire one or more American Express Products.

I note from your letter of 15 December 2006 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).' I also note that under the proposed arrangements 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.

Further, I also note from your letter of 15 December 2006 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.


You have provided additional examples and possible promotions that may be entered into under these notifications. Your clarification of the notified conduct as detailed above has been influential in this respect. On the basis of the information provided, it is not intended that further action be taken in this matter at this stage.

Legal immunity conferred by the notifications commenced on 30 November 2006.

Please note that the ACCC may act to remove the immunity afforded by these notifications at any 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. In particular should it become apparent that the parties engage in conduct that is broader than that clarified in your letter of 15 December, the ACCC may review these notifications.

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 Ms Tina Pigliardo on (03) 9290 1481 or at tina.pigliardo@acc.gov.au.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch