

2 March 2011

AURORA PLACE 88 PHILLIP STREET SYDNEY
GPO BOX 521 SYDNEY NSW 2001 AUSTRALIA
DX 117 SYDNEY www.minterellison.com
TELEPHONE +61 2 9921 8888 FACSIMILE +61 2 9921 8123

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

FILE No:
DOC
MARS/PRISM

Dear Sir/Madam

Optus Mobile Pty Limited – Notification of Exclusive Dealing

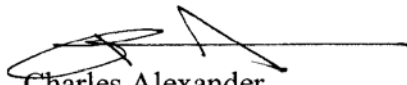
Please find **enclosed** a notification of possible third line forcing conduct, lodged on behalf of Optus Mobile Pty Limited (**Optus**).

Enclosed is:

- (a) a Form G: Notification of Exclusive Dealing; and
- (b) a cheque in the amount of \$100 payable to the Australian Competition and Consumer Commission.

If you have any questions in relation to this notification or require any further information, please contact Jackie Mortensen on (02) 9921 8610 or Charles Alexander on (02) 9921 4826.

Yours faithfully
MINTER ELLISON



Charles Alexander
Partner

Contact: Jackie Mortensen Direct phone: +61 2 9921 8610 Direct fax: +61 2 9921 8401
Email: jackie.mortensen@minterellison.com
Partner Responsible: Charles Alexander Direct phone: +61 2 9921 4826 Direct fax: +61 2 9921 8014
Our reference: JXC:JZH 20-

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) **Name of person giving notice:**

N95297

Optus Mobile Pty Limited ABN 65 054 365 696 (**Optus Mobile**)

(b) **Short description of business carried on by that person:**

Optus Mobile conducts the business of providing mobile and fixed line telecommunications services including broadband internet access to customers in Australia.

(c) **Address in Australia for service of documents on that person:**

Charles Alexander
Minter Ellison Lawyers
Level 19 Aurora Place
99 Phillip Street
SYDNEY NSW 2000

2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Remote electronic secure storage and backup services for mobile and personal computing devices.

(b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

Optus Mobile will supply remote electronic secure storage and backup services to its customers for protection of data stored on mobile and personal computing devices on condition that the customer enters, or agrees to enter into a licence agreement with F Secure Corporation.

F Secure Corporation will provide the remote electronic secure storage and backup facilities at hosting facilities located in Australia and will customise its services to permit Optus Mobile customers to access the services through Optus Mobile's portals.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Optus Mobile retail customers who:

- (i) currently subscribe or will subscribe to at least one of the following Optus Mobile services: Pre Paid Mobile, Post Paid Mobile, Cable Internet, DSL Internet (other than RDSL), DSL Direct Internet, Post Paid Optus Mobile Broadband or PrePaid Optus Mobile Broadband; and
- (ii) who wish to acquire remote electronic secure storage and backup services.

(b) Number of those persons:

(i) At present time:

Substantially greater than 50.

(ii) Estimated within the next year:
(Refer to direction 6)

Substantially greater than 50.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:
(Refer to direction 7)

The proposed conduct will be of benefit to the public because it will allow existing Optus Mobile customers to acquire remote electronic secure storage and backup services at a discount or at no cost through their existing Optus Mobile accounts.

(b) Facts and evidence relied upon in support of these claims:

F Secure Corporation provides Optus Mobile with a service that integrates with the Optus Mobile systems. By outsourcing this service, Optus Mobile is able to avoid additional significant capital investments and expensive storage solutions, the costs of which would necessarily be passed on to consumers if Optus Mobile were to supply the service itself.

In addition, the service is an *optional* service that existing Optus Mobile customers can subscribe to. These customers can choose, on the normal commercial basis of price, whether or not to purchase similar services from any other supplier, or to accept Optus Mobile's service. By retaining this genuine choice, the conduct is not anti-competitive.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

The market is the market for the provision of electronic secure storage and backup services for mobile and personal computing devices.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

There are no public detriments likely to result from the proposed conduct.

(b) Facts and evidence relevant to these detriments:

The proposed conduct will not lessen competition because:

- (i) consumers can choose to use the remote storage services offered by other companies including Telstra and Google;
- (ii) customers can use other secure storage and backup solutions including external hard-drives for their storage and backup solutions;
- (iii) customers are only required to pay for services on a month-to-month basis and are not required to enter into any long-term arrangements for the service;

- (iv) remote electronic secure storage and backup services providers are likely to increase in the future; and
- (v) Optus does not have a substantial degree of market power in any relevant market.

7. Further information

- (a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Charles Alexander
Minter Ellison Lawyers
Level 19 Aurora Place
99 Phillip Street
SYDNEY NSW 2000

Dated 2 March 2011.

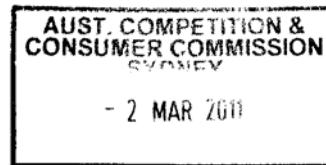
Signed by/on behalf of the applicant


.....
(Signature)

Charles Alexander
.....
(Full Name)

Minter Ellison
.....
(Organisation)

Partner
.....
(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.