

FILE No
DOC
MARS/PRISM

17 October 2013

Caroline Coops
Partner
T +61 3 9643 4097

Australian Competition and Consumer Commission
Level 35 The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

Dear Sir/Madam

Brightstar Logistics Pty Ltd - Notification of third line forcing exclusive dealing

We enclose for lodgement an exclusive dealing notification that Telstra Corporation Limited is lodging on behalf of Brightstar Logistics Pty Ltd ("**Brightstar**") together with a cheque for the applicable lodge fee of \$100.00.

We also enclose an authority from Brightstar authorising Telstra Corporation Limited to lodge the exclusive dealing notification on behalf of Brightstar.

Please do not hesitate to contact Tim Gargett on (03) 9643 4153 should you have any queries or comments.

Yours faithfully

King & Wood Malleons

Encl 2



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:
(Refer to direction 2)

N97042 Brightstar Logistics Pty Ltd (ABN 58 111 399 752) (“**Brightstar**”).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Brightstar’s main business is the provision of distribution services for mobile and wireless devices to manufacturers, wireless operators and retailers.

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

Caroline Coops
King & Wood Mallesons
Level 50, Bourke Place
600 Bourke Street
Melbourne VIC 3000
Tel: 9643 4097

2 Notified arrangement

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

The relevant goods or services are the supply of mobile phone and data devices and associated trade in services and mobile telecommunications services (“**Mobile Products**”).

- (b) Description of the conduct or proposed conduct:

(Refer to direction 4)

Brightstar proposes to:

- (i) supply or offer to supply trade in services to corporate and business customers on condition that the corporate or business customer acquires

Mobile Products from Telstra Corporation Limited (ABN 33 051 775 556)(“Telstra”);

- (ii) refuse to supply trade in services to corporate and business customers for the reason that the corporate or business customer has not acquired or has not agreed to acquire Mobile Products from Telstra.

For example, Brightstar proposes to offer trade in services and make payments to corporate and business customers if they trade in their old mobile phone with Brightstar and purchase a new mobile phone from Telstra (on a one for one basis).

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)

Telstra corporate and business customers.

- (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:

- (i) allow corporate and business customers to receive a payment for trading in old Mobile Products which will effectively reduce the total cost of ownership for Mobile Products for these customers. These are valuable products and services to many corporate and business customers and the ability to effectively reduce the costs of their Mobile Products fleet will benefit the individual customer;
- (ii) promote competition in the provision of Mobile Products by encouraging other business to offer similar trade in programs;
- (iii) promote the recycling and reuse of mobile devices and the reduction of the number of mobile devices being sent to landfill.

The applicant believes that the benefits from the conduct outlined above will outweigh any possible detriment considered to arise from the conduct.

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

None in addition to those facts already described above.

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 relevant markets are national retail markets for mobile phone and data devices and mobile telecommunications services.

These markets are characterised by strong competition. There are several leading retailers of these products as well as many smaller competitors.

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 in the relevant markets because:

- (i) the retail markets for mobile telecommunications goods and services are innovative industries characterised by large numbers of competitors and very intense competition;
- (ii) the proposed conduct will not prevent competitors from competing effectively. The proposed maximum benefits are modest and competitors will be likely to be able to match or better them;
- (iii) the provision of trade in services and payment for old telecommunications goods will have pro-competitive effects in the telecommunications markets by encouraging other businesses to make similar offers;
- (iv) the proposed conduct will be voluntary and corporate and business customers are not compelled to take up the offer, but can choose other providers of the relevant trade in services and telecommunications goods or services if they so desire. Customers remain free to acquire Mobile Products from Telstra without acquiring trade in services from Brightstar; and

- (v) the number of corporate and business customers is not significant in regard to the overall size of the retail markets for the relevant telecommunications goods and services.

The benefits from the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

7 Further information

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

Caroline Coops
King & Wood Mallesons
Level 50, Bourke Place
600 Bourke Street
Melbourne VIC 3000
Tel: 9643 4069

Dated 30 August 2013

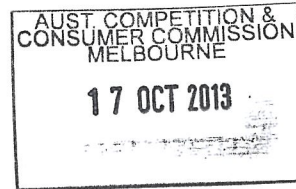
Signed by/on behalf of the applicant


.....
(Signature)

ka
.....
Caroline Coops
(Full Name)

.....
King & Wood Mallesons
(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 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.



14 October 2013

Attention: Taleen Malone

Brightstar Logistics Pty Ltd
ABN 58 111 399 752
5/607 Bourke Street
Melbourne, VIC 3000

Dear Ms Malone,

Third line forcing notification to Australian Competition & Consumer Commission ("ACCC")

I refer to the proposed agreement between Brightstar Logistics Pty Ltd ("**Brightstar**") and Telstra in relation to the operation of the Brightstar mobile device trade in program.

As you are aware, the mobile device trade in program enables customers to trade in their mobile device with Brightstar, and receive payment for that trade in in the form of a credit on their Telstra bill when they acquire a new mobile device from Telstra.

There is a risk that the program constitutes "third line forcing" under the *Competition and Consumer Act 2010* (Cth) (being an offer by Brightstar to offer trade in services to customers on condition that they acquire a new mobile device from Telstra), unless the ACCC is notified of the program in accordance with sub-section 93(1) of that Act.

Accordingly, attached to this letter is a draft third line forcing notification that Telstra proposes to lodge with the ACCC on behalf of Brightstar ("**Form G**") for your consideration and comment.

Please review the notification and indicate your consent by signing below for Telstra to arrange for its solicitors to lodge the notice on your behalf with the ACCC. Telstra has agreed to pay the requisite lodgement fees.

Please sign the consent below and return it to Telstra as soon as possible.

If you have any questions relation to this letter, please contact Chris Thian (2 8576 6093) or Tim Gargett of King & Wood Mallesons (03 9643 4153).

Yours sincerely

Chris Thian
Legal Counsel
For and on behalf of Telstra Corporation Limited

We authorise King & Wood Mallesons to give the Australian Competition and Consumer Commission notice of conduct set out in the attached draft Form G.

Signature:

Name: DAVID NANA YAKKARA

Position: REGIONAL MGR OCEANIA