



BangTango Australia Pty Ltd
ABN 82 160 301 904

1 Blackfriars St, Chippendale
NSW Australia 2008

1 November 2013

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission

BY EMAIL: adjudication@acc.gov.au

Dear Sir/Madam

Form G Notification of Exclusive Dealing Conduct

In respect of BangTango Australia Pty Limited (ABN 82 160 301 904) (**BangTango**)

We enclose:

- (a) an exclusive dealing notification Form G lodged on behalf of BangTango; and
- (b) a copy of the receipt for payment of the applicable lodgement fee of \$100

Please contact us if you have any queries in relation to this matter

Yours sincerely

Daniel Popic
Director

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)

N97072

BangTango Australia Pty Limited (ABN 82 160 301 904) (**BangTango**).

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

BangTango, through its relationships with promoters of live music events and ticketing companies, provides live concert ticketing fulfilment services and related live concert experiences.

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

Brett Oaten
Brett Oaten Solicitors
Studio 502, 3 Gladstone Street
Newtown NSW 2042

2. Notified arrangement

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

This notice relates to the provision of:

- services provided by Telstra to its customers, including mobile and fixed-line telecommunications, internet, IPTV and subscription television services (the **Telstra Products**); and
- provision of live concert ticketing services and related concert experiences by BangTango to customers of the Telstra Products and to staff of Telstra and its subsidiaries (collectively, the **Telstra Customers**).

(b) Description of the conduct or proposed conduct:

BangTango has previously provided notification of certain services (the **BangTango Services**) it provides in relation to live music events (**Events**) through its relationships with promoters of Events (see Form G Notification of Exclusive Dealing dated 20 March 2013) (the **Previous Notification**). The ACCC approved the Previous Notification on 27 March 2013.

BangTango proposes to provide the additional services described below in relation to the Events (**Additional Services**). In the event that the Additional Services are considered not to be covered by the Previous Notification, and for the avoidance of doubt, BangTango provides this further notification in relation to the Additional Services.

The Additional Services BangTango proposes to offer are:

1. An allocation of up to 30% of tickets (but usually no more than 15% of tickets) for each Event to be withheld from sale to the general public and offered to Telstra Customers either at the same time as, or after, tickets become available for sale to the general public (usually at least 24 hours after tickets become available for sale to the general public).
2. Offers to Telstra Customers of Event-related experiences (eg backstage tours or soundcheck access), artist merchandise, purchase, downloading or streaming of the artist's music and/or similar offers in relation to each Event to be purchased as a package along with a ticket to an Event and/or as an add-on to the purchase of a ticket and/or for promotional or competition purposes.

(Refer to direction 4)

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 Customers.

- (b) Number of those persons:

- (i) At present time:

As at 30 June 2013, the "services in operation" Telstra Customer number include 15.1 million mobile customers, 2.8 million fixed retail broadband customers and 7.8 million basic access line customers. Please note that one Telstra Customer may have multiple services with Telstra.

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

Telstra does not provide “forward looking” estimates for its customer numbers. However, Telstra has a strategic priority of retaining and growing such numbers so it is expected that the number of Telstra Customers will increase.

- (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 benefit the public as the Additional Services will be provided to Telstra Customers in addition to the BangTango Services with a range of benefits associated with live music events.

An important part of attracting broad audiences to live music events and ensuring the continued viability of those events is to provide a wide range of value propositions to consumers, including special allocations of tickets and creation of packages and add-ons. The Additional Services, along with the BangTango Services provide a public benefit to consumers of music events by making a broad range of value propositions available to Telstra Customers.

They also provide a public benefit to those involved in staging music events, such as venues, hirers and promoters, and ultimately consumers of music events, in contributing to making commercially viable events that may not otherwise be viable.

In addition, the proposed conduct will promote competition in the markets in which the Telstra Products are supplied as it will encourage competitors of Telstra to procure similar benefits for their customers.

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

The proposed conduct offers benefits to Telstra Customers by giving them access to tickets for high demand Events for which they may otherwise be unable to purchase tickets as these Events are likely to sell out.

It does not compel Telstra Customers to purchase tickets to the Events through the Additional Services or restrict Telstra Customers from purchasing tickets through other providers.

Members of the public who wish to purchase tickets to the Events are still able to do so without being a Telstra Customer, as tickets to the Events will also be available through other providers. Tickets not sold through the special allocation for sale to Telstra Customers will be offered to the general public. Tickets set aside for the allocation to Telstra Customers will be generally distributed across all price categories.

Telstra Customers will not be compelled to purchase tickets to Events only as a package with additional products or only with add-ons, but will have the option of doing so.

Further, the proposed conduct provides further competition with respect to special allocation ticket offers and creation of packages and add-ons. These products involve value propositions and competition and promotional opportunities that may not exist without the proposed conduct.

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)*

For the purposes of this notification only, it is relevant to consider the markets in which BangTango provides its services broadly, as being the market for live entertainment in Australia. The market is highly competitive. A large number of event venues, promoters and their agents as well as large international ticketing providers including Ticketek and Ticketmaster compete in the market.

Further there are a large number of ticket providers competing to provide ticket and ticket package offers in the market. These include offers associated with Showbiz, Pinpoint, Visa, American Express and Optus.

For the purposes of this notification only, it is relevant to consider the markets in which Telstra provides its products and services broadly as being the market for online content and telecommunications services in Australia. Competition in the market is vigorous with a large number of competitors providing options to consumers.

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)

It is submitted there are no public detriments.

There is no lessening of competition as a result of the proposed conduct. There is no obligation on Telstra Customers to acquire any of the BangTango Services. Nor is there any obligation on members of the public who wish to attend the Events to acquire one of the Telstra Products.

- (b) Facts and evidence relevant to these detriments:

The proposed conduct will not lessen competition in the markets in which Telstra or BangTango operate.

The proposed conduct is merely an additional benefit to consumers who are Telstra Customers. Telstra is the biggest telecommunications provider in Australia.

As at 30 June 2013, the “services in operation” Telstra Customer number include 15.1 million mobile customers, 2.8 million fixed retail broadband customers and 7.8 million basic access line customers. Please note that one Telstra Customer may have multiple services with Telstra.

Telstra Customers are free to choose whether or not to take advantage of the Additional Services.

The general public who are not Telstra Customers will still have access to tickets to the Events, since as noted above, there is a limit on ticket allocations of 30% of tickets to an Event (but usually no more than 15% of tickets to an Event) and tickets to the Events offered to Telstra Customers will become available to the general public if not sold to Telstra Customers. Tickets set aside for the allocation to Telstra Customers will be generally distributed across all price categories.

In light of this, the proposed conduct:

1. does not limit the genuine choice of consumers in choosing whether to acquire services from Telstra or its competitors; and
2. does not limit the ability of consumers to acquire tickets to the Events without purchasing a Telstra Product.

Other telecommunications providers and competitors of Telstra will not be put at a disadvantage as they are free to also sponsor live music events, and

they will also have the option of sponsoring the Events at the promoter level.

7. Further information

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

Brett Oaten
Brett Oaten Solicitors
Studio 502, 3 Gladstone Street
Newtown NSW 2042

Dated..... 01/11/13

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(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.