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Madden, Tahlia

From: Hird, Louise
Sent: Tuesday, 20 November 2018 9:39 AM
To: Snell, Heidi; Madden, Tahlia
Subject: FW: HPE CM: ACCC v Telstra-VID 317 of 2018 [DLM=For-Official-Use-Only]
Attachments: Report to ACCC-191118.docx

Hi both

A further report received from Telstra in relation to PDB refunds.

Lou

Louise Hird

Director (A/g) | Enforcement Victoria and Tasmania | Enforcement Division
Australian Competition & Consumer Commission
Level 17 | 2 Lonsdale Street, Melbourne VIC 3000
T: +61 3 9290 1484
www.accc.gov.au

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Please note I work Monday to Thursday

From: Paatsch, Tamara <Tamara.Paatsch@team.telstra.com>
Sent: Monday, 19 November 2018 8:00 PM
To: Hird, Louise <louise.hird@accc.gov.au>
Cc: Lewis, Jay <jay.lewis@accc.gov.au>; Phillimore, Adam <adam.phillimore@accc.gov.au>
Subject: RE: HPE CM: ACCC v Telstra-VID 317 of 2018 [DLM=For-Official-Use-Only]

Hi Louise

I attach Telstra's quarterly report setting out the refunds provided by Telstra to PDB customers. As you will see, we have tracked the changes since the last report. The figures are up to date as at 18 November 2018.

Please let me know if you have any questions.

Regards



Tamara Paatsch Practice Lead,
Dispute Resolution, Risk & Compliance,
Telstra Legal Services
P 03 8694 5469 | E tamara.paatsch@team.telstra.com | W www.telstra.com

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From: Paatsch, Tamara
Sent: Friday, 14 September 2018 5:51 PM
To: 'Hird, Louise' <louise.hird@acc.gov.au>
Cc: Lewis, Jay <jay.lewis@acc.gov.au>; Phillimore, Adam <adam.phillimore@acc.gov.au>
Subject: RE: HPE CM: ACCC v Telstra-VID 317 of 2018 [DLM=For-Official-Use-Only]

Dear Louise

I refer to your email dated 3 September and our discussion on 10 September regarding the report provided by Telstra as part of the commitments given in relation to the PDB proceedings.

As discussed during our call, we have identified that the Telstra Direct PDB Complaint customer number in Table 1 of the Report provided to you on 24 August 2018 was understated as it did not include the customers who had complained to Telstra directly and who had previously been refunded. This was due to an oversight on our part and apologies for any inconvenience caused by this.

I attach a Revised Report (in mark-up and clean) which includes the correct Telstra Direct PDB Complaint customer numbers in Table 1, being 68,638. To assist the ACCC, we have also:

- updated the numbers of customers contacted and refunded in Table 2 to reflect the numbers as at 12 September 2018; and
- made some other changes in Table 1 to clarify the methodology adopted in respect of the Telstra Direct PDB Complaint customer numbers.

In relation to the other matters raised in your email, including those in your table:

1. Confidentiality

Telstra notes the ACCC's position regarding Telstra's claims of confidentiality. In particular, that it is anticipated that, in any public comment, the ACCC would only refer to the total number of customers who have received a refund and the value of those refunds (rather than specifics around the number of customers in each cohort or the number of customers contacted).

Telstra appreciates the ACCC's approach to this issue and, in view of it, does not consider it necessary to press its confidentiality claims further. If the ACCC's position changes, please let me know and it may impact Telstra's position on confidentiality.

Telstra also requests that the ACCC provide it with some advance warning prior to the ACCC making any public comment or publishing the total number of customers who have received a refund and the value of those refunds so we may prepare to respond for any inquiries we might receive.

2. Telstra Direct PDB Complaint customers (page reference 4)

As noted above, the number of Telstra Direct PDB Complaint customers was understated as a result of not including the number of customers who had complained to Telstra directly and who had been refunded previously, being prior to the remediation process being undertaken as part of the commitments given by Telstra in relation to the PDB proceedings. The correct number is 68,638. Telstra considers this number to be consistent with the facts described in the SAFA.

3. Level 0 complaints (page reference 4)

Level 0 complaints are those complaints which are complaints recorded in Telstra's systems that are made directly to Telstra and which are managed by Telstra. Level 0 complaints do not include complaints made directly to Telstra which are then escalated to the TIO (as these are recorded as Level 1 complaints). A level 0 complaint may not have been recorded where a customer contacted Telstra about their PDB service, was referred to their Service Provider and accepted that outcome.

4. Number of customers refunded (page reference 5)

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Telstra has not tracked the customer refunds at an individual customer cohort level and is unable to identify how many customers were refunded in each specific customer cohort. This is because:

- some of the refunded customers fell within several of the different customer cohorts identified (eg a customer could fall within the Barring Representation cohort and the Telstra Direct PDB Complaint customer cohort);
- some customer cohort numbers were identified at the service level (eg Barring Representation, Unsubscribe and Carry Over Representation cohorts) and some were identified at the customer level (Telstra Direct PDB Complaint customer and TIO PDB Complaint customers);
- contact and refunds were made at the customer level and not the service level; and
- Telstra refunded all relevant PDB charges, which meant that if a customer was refunded as a Telstra Direct PDB Complaint customer, they did not require any further refunds under any of the other cohorts because they had already been refunded.

As set out in the Report, we confirm that, other than for customers who *only* fell within the Unsubscribe Representation customer cohort, all other customers contacted by Telstra (being those who fell within any of the other customers cohorts) have been refunded. The number of those customers who have been refunded is 55,744. The number of customers who only fell within the Unsubscribe Representation customer cohort who have been refunded is 15,784.

5. Steps taken by Telstra to contact and offer refunds to Unsubscribe Representation customers (page references 5 – 6)

The steps taken by Telstra to contact and offer refunds to those who only fell within the Unsubscribe Representation customer cohort has been as follows:

- a. Offer of refund where value of potential refund <\$500
 - i. Customers were contacted via email or direct mail to advise that they may be eligible for a refund for PDB charges if they had tried to unsubscribe via SMS and the request was not successful due to Premium SMS barring being applied, and requested to let Telstra know if they had any issues attempting to unsubscribe via a web form link or URL that was included in the email/letter.
 - ii. If the customer responded 'Y' (that they have attempted to SMS stop prior to June 2016), Telstra applied a refund for all PDB charges incurred after the first instance of PSMS barring being applied (irrespective of what date the customer referred to in response). An SMS was sent to the customer's preferred contact number captured in the form to confirm the refund amount.
 - iii. If the customer responded 'N' (that they haven't attempted to SMS stop prior to June 2016), although technically not eligible for a refund for this issue, Telstra still provided a refund. An SMS was sent to the customers preferred contact number captured in the form to confirm the refund amount.
 - iv. As a result of the above process, every customer who responded to Telstra via a webform link or URL, received a refund of their PDB charges incurred after the first instance of PSMS barring being applied.
- b. Offer of refund where value of potential refund >\$500
 - i. Customers were contacted via email or direct mail advising that they may be eligible for a refund for PDB charges if they had tried to unsubscribe via SMS and the request was not successful due to Premium SMS barring being applied, and requested to let Telstra know if they had any issues attempting to unsubscribe via a dedicated 1800 number that was included in the email/letter.
 - ii. When the customer called the 1800 number provided in the email/letter, the agent asked the customer if they had attempted to unsubscribe by sending a stop SMS prior to June 2016. A webform was populated by the agent even if the customer could not confirm they had sent a STOP message.
 - iii. If the customer said yes and the webform identified a 'Y' response was received (indicating the customer attempted to send a 'stop' SMS prior to June 2016), a refund was applied for all PDB charges incurred after the first instance of PSMS barring being applied (irrespective of what date the customer told the agent). An SMS was sent to the customers preferred contact number captured in the form to confirm the refund amount.

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- iv. If the customer said no and the webform identified a 'N' response was received, although technically not eligible for a refund for this issue, Telstra still provided a refund. An SMS was sent to the customers preferred contact number captured in the form to confirm the refund amount.
- v. As a result of the above process, every customer who contacted an agent received a refund of their PDB charges incurred after the first instance of PSMS barring being applied.

Telstra also notes that:

- any emails that bounced back or failed delivery were reissued as a direct mail to the customers last known address; and
- if the customer had an active post-paid service, the refund was provided by way of a credit to their account. If they were a former customer or only had pre-paid services, the refund was provided by way of a cheque.

Regards



Tamara Paatsch General Counsel
Dispute Resolution Group | Legal Services
P 03 8694 5469 | E tamara.paatsch@team.telstra.com | W www.telstra.com

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From: Hird, Louise <louise.hird@acc.gov.au>
Sent: Monday, 3 September 2018 5:15 PM
To: Paatsch, Tamara <Tamara.Paatsch@team.telstra.com>
Cc: Lewis, Jay <jay.lewis@acc.gov.au>; Phillimore, Adam <adam.phillimore@acc.gov.au>
Subject: RE: HPE CM: ACCC v Telstra-VID 317 of 2018 [DLM=For-Official-Use-Only]

Dear Tamara

Thank you for providing this report to the ACCC.

As discussed with you earlier today, the ACCC does not currently accept Telstra's claim of confidentiality in relation to Telstra's report provided to us on 24 August 2018. As I outlined, the ACCC does not consider that the information provided is confidential in nature, and while we have not yet determined how or when we may refer to this information, it is anticipated that in any public comment we would make we would only refer to the total number of customers who have received a refund and the value of those refunds (rather than specifics around the number of customers in each cohort or the number of customers contacted). In particular, I note that the information contained in the report is general in nature and does not reveal individual customer details or information of a commercially sensitive nature. It is therefore difficult to see how Telstra could have a proper basis to make a confidentiality claim over the number of customers or quantum of refunds provided.

Finally, we also have some clarifying questions regarding Telstra's report, which are outlined in the table below.

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Page reference	Telstra quote	ACCC question or Information request
4	Telstra Direct PDB Complaint customers: 26,726	<p>Paragraph 24 of the Statement of Agreed Facts and Admissions (SAFA) states: "as at October 2015, Telstra recorded having received approximately 20,000 calls about third party content that month and in May 2016, approximately 36,000 calls. A significant proportion of these calls related to PDB content services. While it is not possible to determine the precise number of calls from customers disputing charges billed through the PDB service, over the relevant period it would be in the order of tens of thousands and possibly up to or in excess of 100,000."</p> <p>Given these facts, the ACCC considers that the number of Telstra Direct PDB Complaint customers is very low. Please explain the discrepancy between this number and the facts described in the SAFA.</p>
4	Level 0 complaints are complaints recorded in Telstra's systems that are made directly to Telstra and which are managed by Telstra.	Please confirm that 'Level 0 complaints' includes all complaints made to Telstra, including complaints referred to third parties.
5	Number of customers refunded – 71,403	<p>Please outline how many customers were refunded by Telstra in each specific cohort (being the Barring Representation customers, Unsubscribe Representation customers, Carry Over Representation customers, TIO PDB complaint customers and Telstra Direct PDB Complaint customers).</p> <p>If a refunded customer was identified in more than one cohort, please include that customer in the total for both cohorts.</p>
5-6	Most of the customers who were contacted were the Premium SMS barred PDB services customers identified in Table A in relation to the Unsubscribe Representation (which was the largest cohort of customers identified and contacted), many of which have not accepted Telstra's offer of a refund.	Please outline the steps taken by Telstra to contact and offer refunds to these customers including the steps required to accept or reject a refund offer from Telstra.

Please contact me if you would like to discuss. I would appreciate it if you could get back to me in relation to the confidentiality issue by 10 September 2018.

Kind regards

Louise

Louise Hird

Director (A/g) | Enforcement Victoria and Tasmania | Enforcement Division
Australian Competition & Consumer Commission

Level 17 | 2 Lonsdale Street, Melbourne VIC 3000

T: +61 3 9290 1484

www.accc.gov.au

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From: Paatsch, Tamara <Tamara.Paatsch@team.telstra.com>
Sent: Friday, 24 August 2018 4:38 PM
To: Hird, Louise <louise.hird@acc.gov.au>
Subject: HPE CM: ACCC v Telstra-VID 317 of 2018

Dear Louise

I refer to the commitments given by Telstra and noted in the final orders in the PDB proceedings, which included providing the ACCC with information relating to the identification of, and contact and refunds made to, customers. Telstra committed to provide this information to the ACCC within four months of the making of the final orders in those proceedings and quarterly thereafter for one year.

Please find attached the first report from Telstra containing the information it committed to provide the ACCC. Telstra will provide its next report by the end of the next quarter, being by 24 November 2018.

The attached report contains information some of which is confidential and commercially sensitive to Telstra and is provided to the ACCC on a confidential basis.

Telstra therefore requests that the ACCC accept the report on a confidential basis, noting that:

- a) we understand there will be no restriction on the internal use, including future use, that the ACCC may make of the confidential information consistent with its statutory functions;
- b) the confidential information may be disclosed to the ACCC's external advisors, with each adviser being informed of the obligation to treat the information as confidential; and
- c) the ACCC will not disclose the confidential information to any third parties (other than external consultants) without first obtaining Telstra's written consent unless compelled to so by law.

Please let me know if you have any questions regarding the information in the report.

Kind regards



Tamara Paatsch General Counsel
Dispute Resolution Group | Legal Services
P 03 8694 5469 | E tamara.paatsch@team.telstra.com | W www.telstra.com

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Telstra Corporation Limited – PDB Proceedings Information for ACCC, Revised Report 1, dated 14 September 2018 Overview

- Telstra committed to provide the ACCC with certain information within four months of the making of the final orders in *ACCC v Telstra Corporation Limited, VID 317 of 2018 (PDB Proceedings)* and quarterly thereafter for one year, which commitments were noted by the Court on the making of the final orders in the PDB Proceedings on 26 April 2018.
- The information to be provided by Telstra to the ACCC relates to the identification of certain customers, the number of customers identified, contacted and refunded, and the value of those refunds, and is detailed in paragraph 92(d) of the Statement of Agreed Facts and Admissions filed in the PDB Proceedings (**SAFA**).
- This document is the first report to the ACCC containing the information Telstra has committed to provide the ACCC. All numbers and dollar figures in this report are as at ~~12-September~~18 November 2018.
- Capitalised terms used in this document have the same meaning as those used in the SAFA and the paragraph numbers referred to in Table 1 and 2 below refer to paragraphs of the SAFA.

Table 1 – Information to be provided pursuant to paragraphs 92(d)(i) and (ii) of the SAFA, being the steps taken to identify the customers in accordance with paragraph 92(a) and, for each of the categories of customers specified in paragraph 92(a), the number of customers identified.

Para 92(a) SAFA - Customer groups	Para 92(d)(i) - Steps taken to identify customers	Para 92(d)(ii) – No. of customers ¹ identified
Barring Representation customers - para 92(a)(i)	The steps taken to identify customers in relation to the Barring Representation were: <ul style="list-style-type: none">• extracting from Telstra's systems, a file of all Telstra mobile services which had PDB charges applied in the period up to 2 March 2018, which file included the mobile service number (MSDIDN), account name, account number, connection date, disconnection date, change date, change reason (PDB customer data);	26,104

¹ The "customer" numbers identified in relation to the Barring, Unsubscribe and Carry Over Representations are numbers at the service (MSDIDN) level. Some customers may have more than one service (MSDIDN) in their name/account. Accordingly, the number of actual customers in those three cohorts is likely to be less than the numbers of services identified. A customer MSDIDN may also fall within multiple customer groups. The "customer" numbers identified in relation to the TIO PDB Complaints and Telstra Direct PDB Complaints are at the customer complaint level. A customer complaint may relate to more than one service.

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Para 92(a) SAFA - Customer groups	Para 92(d)(i) - Steps taken to identify customers	Para 92(d)(ii) – No. of customers ¹ identified
	<ul style="list-style-type: none"> • identifying from the PDB customer data all of those services which had requested PDB barring by identifying: <ul style="list-style-type: none"> • from Telstra systems, the services that had PDB barring applied to the account (PDB barring customers); and • the date on which that PDB barring was first applied to each of those services, (PDB barring customer data); and • from the PDB barring customer data and the PDB services data, identifying the services which, in the period up to 2 March 2018, had PDB charges applied subsequent to the date on which PDB barring was first applied to that service (Barring Representation customers). 	
Unsubscribe Representation customers - para 92(a)(i)	<p>The steps taken to identify customers in relation to the Unsubscribe Representation were:</p> <ul style="list-style-type: none"> • identifying from the PDB customer data all of those services which had also requested PSMS barring in the period up to and including 31 May 2016 by identifying: <ul style="list-style-type: none"> • from Telstra systems, the services listed in the PDB customer data that had PSMS barring applied to their service in the period up to and including 31 May 2016 (PSMS barring customers); and • the date on which that PSMS barring was first applied to each of those services, (PSMS barring customer data); and 	227,583 ²

² Telstra has only been able to identify the mobile services which had PDB charges and which, prior to 31 May 2016, had barred Premium SMS services. It has not been able to identify which of those were impacted by the Unsubscribe Representation, being those who had tried unsuccessfully to unsubscribe from their PDB services by sending a STOP SMS message. It has however contacted all the customers in respect of the services identified to offer them a refund if they had tried to send a STOP message to unsubscribe from their PDB service, many of whom have not accepted the refund - see also at table 2 below.

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Para 92(a) SAFA - Customer groups	Para 92(d)(i) - Steps taken to identify customers	Para 92(d)(ii) – No. of customers ¹ identified
	<ul style="list-style-type: none"> from the PSMS barring customer data and the PDB customer data, identifying the services which, in the period up to 2 March 2018, had PDB charges applied subsequent to the date on which PSMS barring was first applied to that service (Unsubscribe customers). 	
Carry Over Representation customers - para 92(a)(i)	<p>The steps taken to identify customers in relation to the Carry Over Representation were:</p> <ul style="list-style-type: none"> identifying from the PDB customer data all MSISDNs which: <ul style="list-style-type: none"> had different customers (i.e. with different account name or number) and had PDB charges applied for both customers on that MSISDN; had been disconnected (i.e. and making the service inactive) and then reconnected to the new customer, with a period of time between the disconnection and reconnection dates of more than 28 days; and had a re-connection date with the new customer before 14 August 2016 (Carry Over date), (Carry Over customer data); and from the Carry Over customer data and the PDB customer data, identifying the services which, in the period up to and including 2 March 2018, had PDB charges applied subsequent to the Carry Over Date (Carry Over customers). 	858
TIO PDB Complaint Customers - para 92(a)(iii)	<p>The steps taken to identify customers who had made a complaint to the TIO in relation to PDB content charges for subscriptions signed up prior to 4 December 2017 were:</p> <ul style="list-style-type: none"> extracting a file of complaints recorded in Telstra's systems as "Level 1" complaints³ relating to the period up to and including 31 March 2018 (TIO complaint data); 	2,394

³ Level 1 complaints are complaints recorded in Telstra's systems as having been made by a Telstra customer to the TIO.

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Para 92(a) SAFA - Customer groups	Para 92(d)(i) - Steps taken to identify customers	Para 92(d)(ii) – No. of customers ¹ identified
	<ul style="list-style-type: none"> reviewing the categories of complaints and comments in the TIO complaint data to determine whether the complaint related to PDB subscriptions (TIO PDB complaint data); and running the TIO PDB complaint data against the PDB customer data to identify the customers who had services which had PDB charges applied for which there was a TIO complaint relating to PDB (TIO PDB complaint customers). 	
<p>Telstra Direct PDB Complaint customers – para 92(a)(iii)</p>	<p>The steps taken to identify customers who had made a complaint directly to Telstra⁴ in relation to PDB content charges for subscriptions signed up prior to 4 December 2017 were:</p> <ul style="list-style-type: none"> extracting a file of complaints recorded during the period up to and including 31 March 2018: <ul style="list-style-type: none"> in Telstra's systems as Level 0 complaints⁵ relating to PDB or third party charges; under the escalated complaints process⁶; and by Telstra's Mobile Premium Services customer service representatives⁷ relating to PDB charges, (Telstra Direct PDB complaint data); and running the Telstra Direct PDB complaint data against the PDB customer data to identify the customers who had services which had PDB charges applied for which there was a direct complaint to Telstra relating to PDB (Telstra Direct PDB complaint customers). 	<p>68,638</p>

⁴ Telstra has not included in this cohort any customers who made a complaint to the TIO (including where the complaint may have first been made to Telstra directly), as these customers have been included in the TIO PDB Complaint customers cohort.

⁵ Level 0 complaints are complaints recorded in Telstra's systems that are made directly to Telstra and which are managed by Telstra.

⁶ Escalated complaints recorded in the period 18 June 2015 to 8 August 2016 under the escalation process set out in paragraph 38 of the SAFA.

⁷ Telstra's Mobile Premium Services customer service representatives are the dedicated cell set up by Telstra in August 2016, as referred to in paragraph 49 of the SAFA.

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Table 2 - Information to be provided pursuant to paragraphs 92(d)(iii) and (iv) of the SAFA, being the number of customers contacted and refunded, the number of customers (if any) refused refunds and the amount of money refunded.

Customer groups	Information required	Comments
Para 92(d)(iii) - Communication and offers to refund the customers identified in paragraphs 92(a)(i),(ii) and (iii), being the Barring Representation customers, Unsubscribe Representation customers, Carry Over Representation customers, TIO PDB complaint customers and Telstra Direct PDB Complaint customers	Number of customers contacted - 272,397	<p>The number of customers contacted by Telstra is less than the sum of the number of customers identified in each group in Table 1 because:</p> <ul style="list-style-type: none">• the number of customers identified in the first three groups in Table 1 are numbers at the mobile service (MSDIDN) level - some customers have multiple services;• some customers were identified in more than one customer group in Table 1 (for example, a customer may have been identified as a Barring Representation customer as well as a Telstra Direct PDB Complaint customer);• Telstra has only communicated and offered to refund customers once in respect of all their relevant services, including where they have been identified in more than one customer group identified in Table 1;• some customers were identified as falling within a customer group but were not contacted as Telstra's records and records obtained by Telstra from its Service Providers indicated that they had already been refunded by Telstra, the Service Provider or Content Provider for the relevant PDB charges; and• Telstra did not have any customer or contact details for a very small volume of services, being less than 0.7% of the total customers identified for an offer of refunds.

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Customer groups	Information required	Comments
	Number of customers refunded - 71, 528685	The number of customers refunded is much less than the number of customers contacted because most of the customers who were contacted were the Premium SMS barred PDB services customers identified in Table A in relation to the Unsubscribe Representation (which was the largest cohort of customers identified and contacted), many of which have not accepted Telstra's offer of a refund. This is likely due to many of those customers not having sought to send a STOP SMS message to unsubscribe from their PDB services prior to 31 May 2016 and not considering that they were impacted by the Unsubscribe Representation. All other customers contacted by Telstra, being those within the other Customers groups identified in Table A, have been refunded.
	Number of customers (if any) refused refunds - NIL	
	Amount of money refunded - \$9,078,847.49 \$9,095,423.29	
Para 92(d)(iv) - Customers who, during the period from 26 March 2018, have complained to Telstra in relation to PDB content charges for subscriptions signed up prior to 4 December 2017	Number of customers who have complained - 1,2571,349	This number relates to those customers who complained to Telstra in relation to PDB services content charges only.
	Number of customers refunded - 1,2571,349	
	Number of customers (if any) refused refunds - NIL	
	Amount of money refunded - \$287,017.52 \$264,377.25	