



Australian Competition & Consumer Commission

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18 March 2005

Ms Nikki Vajrabukka  
Telecommunications Consumer Policy  
Department of Communications, Information Technology and the Arts  
GPO Box 2154  
Canberra ACT 2600

Dear Ms Vajrabukka

**PUBLIC COMMENT ON ACA REPORT – PREVENTING UNEXPECTEDLY HIGH BILLS: CREDIT MANAGEMENT IN TELECOMMUNICATIONS**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the Australian Communications Authority (ACA) report titled *Preventing Unexpectedly High Bills: Credit Management in Telecommunications* (the Report).

The ACCC notes that it has previously provided comment to the ACA on issues related to debt collection and consumer contracts. In particular, the ACCC discussed these issues in a letter dated 12 May 2003. A copy of this letter is attached.

The ACCC notes with interest the results of the ACA's inquiry into unexpectedly high bills, in particular that:

- these problems show every sign of worsening;
- there is little sign that carriage service providers (CSPs) appreciate the nature and scope of the problem in their own sector;
- the general paucity and low standard of credit management tools made available by many carriage providers to prevent or reduce the impact of unexpectedly high bills;
- the quantity of default listings indicates a high level of adverse social consequences affecting telecommunications users; and
- the ACA considers it appropriate that steps are taken to remedy this state as quickly as possible.

These findings are of particular interest to the ACCC in view of the high number of complaints relating to debt collection activity received by the ACCC. A significant number



of these complaints relate to debt collection activity connected to the telecommunications industry.

The ACCC makes the following specific comments in relation to the Report.

### **Internet Dumping**

The ACCC was unable to find a reference in the Report to internet dumping allegations where the consumer is transferred to a separate service via a domestic long distance number (STD). Some adult website services are accessed via such numbers with the gateway provider using a reverse directory approach to invoice the bill payer. An emphasis on only international numbers may mean that consumers would not be aware of such scenarios.

The ACCC considers that there may be a need for guidelines that deal with the role the carrier should take in dealing with the provider of such services, where it would appear that domestic long distance numbers may be involved in internet dumping.

### **Contracts with minors**

The ACCC notes that it has received a number of complaints from consumers who allege that CSPs have obtained their signature on contracts on the basis that the consumer is a guarantor of a contract with a minor, rather than the primary account holder. The ACCC notes the comment that "Regardless of who uses the service, the account holder is generally held responsible for paying for that use by CSPs. This is generally true even in cases where CSPs are aware that the main user of a service is a minor..." (at page 22 of the Report).

The ACCC considers that consumers in the above circumstances may have a remedy against a CSP arising from the misleading and deceptive conduct provisions of the *Trade Practices Act 1974* (Cth) (TPA) particularly in view of uncertainty relating to the enforceability of contracts with minors. As such the ACCC considers that this issue (and other situations where misleading and deceptive conduct or other breaches of the law are alleged) should not be the subject of a credit management framework, but rather, isolated and addressed in a general complaints handling framework.

### **Hardship issues**

The ACCC notes that "The Minister has not sought advice on current post-debt actions taken by CSPs not on existing hardship policies. However the ACA notes that it would be appropriate for financial hardship to be considered in an industry-wide approach to credit management (at page 6 of the Report)."

The ACCC is aware that hardship policies are a feature of a number of regulatory frameworks relating to utilities, in particular, electricity, gas and water. The *Uniform Consumer Credit Code* also contains provisions that enable variation of credit contracts in certain circumstances of hardship. It is the ACCC's understanding that such policies operate above and beyond general requirements relating to credit provision in those industries and we therefore suggest that consideration be given to specific treatment of the issue of hardship in any strategy for implementing a credit management framework proposed by the ACA.

## **Definition of credit provision**

Without suggesting a view on whether or not the offering of deferred payment of telecommunications services is equivalent to the offering of credit in the financial services sector, the ACCC notes that in order for a CSP to obtain access to credit reporting products it must satisfy the definitions of 'credit provider' set out in the Office of the Federal Privacy Commissioner's relevant determination.

## **ACCC/ASIC Guidelines on debt collection**

The ACCC notes that it has recently undertaken a joint project with the Australian Securities and Investments Commission (ASIC) to revise and update *Debt Collection and the Trade Practices Act* published by the ACCC in 1999. The draft revised *Debt Collection Guideline* was released for public consultation on 14 February 2005. The consultation period closes on 31 March 2005. The ACCC and ASIC hope to release the revised guideline in May 2005. It is noted that the 1999 guideline is referenced in the ACIF code relating to Credit Management. The ACCC hopes that the revised guideline will be a feature of any new or revised framework for credit management in telecommunications.

## **A framework for the provision of credit management tools**

The ACCC notes the ACA's proposal for the framework for the provision of credit management tools on page 48 of the Report. In general we would support a framework that is both effective and offers sensible flexibility. We suggest, however, that there may be a number of practical difficulties with the framework as proposed. In particular:

- The range of tools outlined under outcomes 1 and 2 are such that some of the options regarding minimum numbers of tools are effectively default options. For example, there is only one four star and no three star options available under outcome 1, therefore making the five star option the only available option under the proposed framework. Similarly, under outcome 2 there are no five star options and only one four star option available, effectively making the three x three star option the default. Inclusion of a broader range of options would clearly address this issue.
- Given the breadth and seriousness of the credit management problems identified by the ACA in its report, the ACCC is concerned that the selection of the three x three star option, particularly under outcome 3 may not be effective in addressing the range of credit management problems identified. For example it would be possible for a CSP to elect to provide a hard cap on selected services only, barring of services and pre-paid accounts (both of the latter at the customer's election). This would be unlikely to address identified problems relating to extreme usage of services, unauthorised use or high bills arising from use of general services.

## **Strategies for implementation of the framework for provision of credit management tools**

On the basis of the analysis contained in the Report and its own experience of participation in the development of existing industry codes, the ACCC is inclined to prefer implementation strategies 4 or 5.

We also agree with the ACA's finding that it is appropriate to remedy the state of credit management practices in the telecommunications sector as quickly as possible. This is particularly important in view of the Report's prediction that problems show every sign of worsening.

I hope the above information is of assistance. Please contact Catriona Lowe on (03) 9290 1825 if you have any queries or require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Antich', written in a cursive style.

Robert Antich  
General Manager  
Policy & Liaison Branch

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12 May 2003

Ms Frances Wood  
Manager  
Codes and Consumer Safeguards  
Australian Communications Authority  
PO Box 13112  
Law Courts  
Melbourne Vic 8010

Dear Ms Wood

Thank you for your letter dated 10 April 2003. The Australian Competition and Consumer Commission (the ACCC) welcomes the opportunity to provide input its views to the Australian Communications Authority (AComma) regarding the effectiveness of the Australian Communications Industry Forum (ACIF) Guideline on Consumer Contracts (the Guideline).

We note the following matters arising from complaints made to the ACCC or action taken by the ACCC that we consider relevant to your consideration of the effectiveness of the Guideline:

- The Guideline has been in place for a relatively short time and it may therefore be difficult to draw firm conclusions about the effectiveness of its operation;
- An overall decrease in the number of telecommunications related complaints made to the ACCC can be observed when the period August – December 2002 is compared to January – April 2003. However, analysis suggests that the August – December figures represent a ‘spike’ resulting from publicity surrounding the enforcement result in the Telstra Say G’Day matter and general publicity surrounding the Siemens A40 offer in the pre-Christmas period. These matters are discussed further below;
- Whilst a decrease in the overall number of telecommunications related complaints has been observed, we have observed significant increases in complaints relating to billing disputes – from 113 to 196, a movement from 6.16% of total telecommunications complaints to 13.96 of telecommunications complaints. This is



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consistent with the significant upward trend in potential and confirmed breaches of the Billing and Credit Management Codes, displayed in data provided by ACIF based upon the Telecommunications Industry Ombudsman website data.

- Whilst a small number of the billing dispute complaints to the ACCC can be excepted from consideration on the basis that they relate to a dispute as to whether certain calls were made, the trend remains an upward one.

In contrast, we would expect to observe a decreasing trend in billing dispute complaints were the Guideline operating effectively. This is because the Guideline, operating effectively ought to minimise or remove any gap between a consumer's expectations of the nature and quantum of the charges they will pay and the charges that are in fact levied against them. We note that whilst the Guideline excludes consideration of the price for which services are offered from consideration of whether a contract is fair or unfair, the level and adequacy of disclosure of applicable fees and charges, is clearly relevant to an assessment of fairness.

- Finally we note the following case studies, which suggest that the Guideline has not been adequately considered by carriers in relation to their existing products or the planning of new initiatives.

**Siemens A40:** In this matter, Siemens introduced a pre-paid product into the pre-Christmas market. On the box of the product the claim was made that no unlock fees applied to the product. On examination of terms and conditions of the contract however, an unlock fee was included.

**Telstra Say G'Day:** In late 2002 the ACCC obtained Federal Court orders that Telstra had misled consumers in relation to its pre-paid long distance 'Say G'Day' calling card product. Telstra made headline claims about a 'FREECALL' number that misled consumers about the significant charges (in some instances 10 times the advertised rate) that they would incur when using the product.

In our view, the Guideline, operating effectively, ought to ensure there is consistency between the advertising and merchandising claims and contract terms and conditions.

Please do not hesitate to contact [?] if you have any queries or wish to discuss any aspect of this letter. Otherwise we look forward to receipt of the Authority's paper and advice as to the future progress of this issue.

Yours sincerely

Jennifer McNeill  
Commissioner