

# Banking and Financial Services Ombudsman Limited

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31 March 2005

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

Dear Ms Vajrabukka

## **Australian Communications Authority Report: Preventing Unexpectedly High Bills: Credit Management in Telecommunications**

Please find attached a supplementary submission from the office of the Banking and Financial Services Ombudsman in response to the Australian Communication Authority Report: Preventing Unexpectedly High Bills: Credit Management in Telecommunications.

The comments in this submission supplement the comments made by the Banking and Financial Services Ombudsman in its initial submission to the Australian Communications Authority on 9 September 2004.

This submission has been prepared by the office of the Banking and Financial Services Ombudsman. It does not necessarily represent the views of the board of the Banking and Financial Services Ombudsman Scheme.

If you require any further information, please contact Ms Margery Clark on (03) 9613 7370.

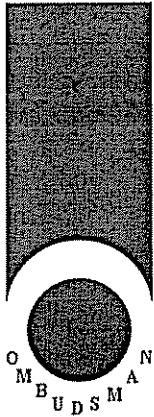
Yours sincerely



**Colin Neave**  
**Australian Banking and Financial Services Ombudsman**

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# SUPPLEMENTARY SUBMISSION OF THE BANKING AND FINANCIAL SERVICES OMBUDSMAN TO THE AUSTRALIAN COMMUNICATIONS AUTHORITY

## REPORT: PREVENTING UNEXPECTED HIGH BILLS: CREDIT MANAGEMENT IN TELECOMMUNICATIONS

MARCH 2005

### 1. Scope of this Submission

This submission provides comments in relation to the Australian Communications Authority's ("the ACA's") Report: *Preventing Unexpectedly High Bills: Credit Management in Telecommunications* ("the Report").

The ACA initially released a discussion paper in relation to the prevention of unexpected high bills on 4 August 2004 ("the Discussion Paper").

The Banking and Financial Services Ombudsman ("the BFSO or the Scheme") made a submission in response to the Discussion Paper on 9 October 2004 ("the initial submission").

The ACA subsequently released the Report and has sought further public comment in relation to the conclusions and recommendations in the Report. The ACA has specifically requested comments in relation to the following aspects of the Report:

- the ratings of the effectiveness of credit management tools given in Table 2 on pages 47 and 48 of the report to be adopted;
- the minimum performance levels at the bottom of page 48 of the report to be adopted; and
- detailed specification of requirements for implementation of the framework via a Service Provider Determination, with an option open to carriage service providers to prepare individual implementation plans which are approved by the regulator, would be the most

appropriate regulatory mechanism for achieving improvement in credit management practices.

Our submission addresses each of these aspects of the Report. Our comments are based on our experience as an industry-based dispute resolution scheme involved in resolving disputes in the financial services sector.

## 2. Comments

*The ratings of the effectiveness of credit management tools given in Table 2 on pages 47 and 48 of the report to be adopted*

The aim of the credit management tools canvassed by the ACA is to reduce the problem of unexpectedly high bills in the telecommunications sector.

The ACA identified that one of the causes of unexpected high bills is the failure of carriage service providers ("CSPs") to limit expenditure by consumers of telecommunications services in line with their preferences or ability to pay. The ACA proposed 14 credit management tools to address this issue.

Financial Services Providers ("FSPs") have long been the subject of a legal and regulatory framework, which places limits on the manner in which credit can be extended to customers. This legal framework, which is discussed below and outlined in greater detail in our initial submission, works effectively to limit the amount of credit provided to a consumer in line with the consumer's capacity to pay. We recommend that the ACA consider the benefits and effectiveness of this framework when assessing the credit management tools it proposes.

### Requirements in the Financial Services Sector

In the financial services industry, particular obligations apply in respect of lending to consumers. Banks are obliged to:

- assess a borrower's capacity to repay and only lend an amount which the borrower can afford to repay; and
- stipulate the total amount of credit provided, if that amount is ascertainable, or, if it is not, the maximum amount of credit agreed to be provided.

These obligations stem from the standard of care owed by a bank to its customer at law, the requirements of the Uniform Consumer Credit Code ("the UCCC") and the contractual obligations of a bank to its customer under the Code of Banking Practice ("the CBP").

#### Effectiveness of credit management in the financial services sector

On page 27 of the Report, the ACA compared the level of credit control complaints received by the Telecommunications Industry Ombudsman ("the TIO") with the total number of complaints received by the BFSO.

The Report indicated that the TIO received 9,484 credit control complaints in 2003-04 compared to 5,859 disputes received in total by the BFSO.

The TIO's 2003-04 annual report revealed that it received 59,850 complaints in total during the reporting period, indicating that credit control complaints represent 15.84% of total complaints received.

Over the 2003-04 period, 6,117 cases were closed by the BFSO. Each closed case was categorised according to the product of service obtained by the consumer and the problems with the product or service, as reported by the consumer:

- 1.68% of closed cases related to maladministration in granting credit for a credit card facility; and
- 1.94% of closed cases related to maladministration in granting a loan for a personal loan facility.<sup>1</sup>

While the BFSO has seen an increase in the number of maladministration in lending disputes received over the past five years<sup>2</sup>, the overall percentage of disputes which relate to maladministration in lending is considerably lower than the percentage of complaints in relation to credit control which are received by the TIO.

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<sup>1</sup> See our initial submission for a discussion of the meaning of 'maladministration in lending'.

<sup>2</sup> For a discussion in relation to the number of 'maladministration in lending' disputes received by the BFSO see our submission to the Senate Economic References Committee inquiry into possible links between household debt, demand for imported goods and Australia's current account deficit, available at [http://www.apf.gov.au/senate/committee/economics\\_ctte/household\\_debt/submissions/sublist.htm](http://www.apf.gov.au/senate/committee/economics_ctte/household_debt/submissions/sublist.htm).

This suggests two things.

First, the current legal framework which regulates the provision of consumer credit in the financial services sector is considerably more effective at limiting the provision of credit in line with a customer's capacity to pay than the systems currently in place in the telecommunications sector (these systems are outlined on page 41 of the Report).

Second, the framework in place in the financial services sector provides a model which may assist the telecommunications sector in reducing the problem of unexpectedly high bills given that this problem stems, in part, "from the practice of there being no limit to the amount of credit that is allowed to be attained by many consumers"<sup>3</sup>

#### Credit Management Tools proposed by the ACA

The "hard cap across total bill: limit determined via credit assessment" credit management tool appears to most closely reflect the current requirements for the provision of credit within the financial services sector.

This credit management tool would require that the CSP:

- undertake an assessment of each customer's credit standing and determine a "hard cap" applied across the total of a bill issued by a CSP to that customer; and
- notify a customer in advance about their pre-determined "hard cap".

Based on our experience in the financial services sector, this tool is likely to be the most effective for reducing unexpectedly high bills and we agree with the 5 star rating the ACA has given to this option.

#### Management of "hard caps"

Based on our experience in resolving disputes in relation to maladministration in lending, we recommend that the application of a hard cap to the provision of telecommunication services be accompanied by appropriate measures for:

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<sup>3</sup> Pg 40 of the Report

- enabling a customer to apply for an increase to their hard cap, subject to assessment by the provider;
- enabling a customer to reduce their hard cap by request, because it is their preference to do so or because their circumstances have changed;
- enabling a CSP to offer to increase a customer's hard cap, provided that an appropriate re-assessment of a customer's capacity to service an increase in the hard cap is undertaken prior to the offer being made; and
- enabling the customer to negotiate an affordable payment plan in circumstances where the customer's situation has changed (for example, through sickness or unemployment) and they cannot afford to pay an account in full by the due date without substantial hardship.

*The minimum performance levels at the bottom of page 48 of the report to be adopted*

*Detailed specification of requirements for implementation of the framework via a service provider determination, with an option open to carriage service providers to prepare individual implementation plans which are approved by the regulator, would be the most appropriate regulatory mechanism for achieving improvement in credit management practices.*

#### Making credit management tools available

The framework proposed for the provision of credit management tools would require that the CSP "make available" particular credit management tools for each of its fixed, mobile and internet services.

The term "make available" is confusing.

It is unclear whether this is intended to mean that:

- a) where a CSP makes a credit management tool available, it is required to offer it to its customers as an option; or
- b) the customer must utilise the credit management tool proposed in order to obtain telecommunications services.

For example, in the case of “advice of charge during call or session”, it is not apparent whether, if a CSP decided to make this option available, it would be required to implement the tool on all calls (other than fixed price calls) or only when requested by the customer (who may elect not to nominate any calls for this service).

In the financial services sector, the obligation falls on a FSP to assess an individual’s capacity to repay a debt before extending credit. It has been demonstrated on numerous occasions in the financial services sector, that when a credit limit too high for the customer to service is applied (due to inadequate or no assessment of capacity to pay), the customer often spends to the limit and cannot pay the resulting bill. Often, it appears that the amount spent corresponds to the limit imposed by the provider.

Placing the responsibility on the individual to elect whether or not to use a credit management tool is likely to substantially weaken the effectiveness of any credit management tool, particularly where the customer has a low understanding of the bills that could be incurred, or low ability to control spending behaviour.

#### Complexity of the Minimum Performance Levels

While the framework proposed offers CSPs flexibility in terms of its implementation, there is the potential for the framework to cause a significant degree of confusion for consumers and a low standard of protection in terms of what is offered.

The credit management tools adopted will vary depending on the attitude of the particular CSP. The already complex task of comparing call cost information from different CSPs will be heightened by consumers needing to further consider which credit management tools are appropriate for them and which CSP offers those tools.

Many, if not most, consumers may not realise the need for a particular credit management tool until after they have received an unexpectedly high bill, at which point they may already be locked in a contract with a particular CSP.

There is also a risk that consumers, particularly young consumers, may opt for the CSP which will provide them with greatest access to various services and the least limitation on the amount of expenditure they can incur. There would be little incentive for a CSP to impose a high standard, such as a hard cap, when it may mean other CSPs can attract customers by

promoting credit assessment methods which are less stringent and therefore more likely to result in the provision of a desired service (although at the risk that the customer cannot afford it).

#### No mandatory minimum standard

We note that the ACA is reluctant to endorse a 'one size fits all' solution to the problem of unexpectedly high bills. However, in our view it is desirable to provide a single minimum framework, which all CSPs must apply for the protection of customers. This would appear particularly necessary, given the ACA's observation on page 30 of the report that:

*"An appreciation of the nature and scope of the problem of unexpectedly high bills appears to be largely absent among CSP's, with the effect that few CSP's have interest in addressing the problem of unexpectedly high bills".*

That is, we consider that it is desirable for the telecommunications industry to adopt a credit assessment requirement modelled on that which operates within the financial services sector, aimed at assessing the maximum amount that the customer can afford per repayment cycle and limiting the credit provided to that amount. This would provide clarity for users of telecommunications services and will ensure uniformity across the sector.

#### **Further information**

If you require any further information about this submission, please contact Ms Margery Clark, on (03) 9613 7370.



**Colin Neave**  
**Banking and Financial Services Ombudsman**