



## **Decision – 29 October 2019**

### **(De-identified for publication)**

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This document sets out my decision on a complaint about the Provider from the Company.

My decision is what I believe to be a fair and reasonable outcome, having regard to:

- relevant laws and codes (based on my view of what a Court would be likely to find in all the circumstances), and
- good practice, including industry guidelines.

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### **1. Decision**

My decision is the Provider must take the following actions within five business days of receiving the Company's written acceptance of this decision:

- confirm in writing to the Company it has cancelled the service contract and waived all charges, and
- pay the Company \$17,554.60, made up of:
  - \$16,938.52 for the costs of cancelling the [finance company] equipment rental agreement,
  - \$250 as a refund of the bond for the dongle, and
  - \$353.37 as a refund of the charge for installation of the fax line and \$12.71 for the service charges for the fax for the period it was not working.

Payment must be made by bank cheque delivered to the address nominated by the Company.

When the Provider has paid the cost of cancelling the [finance company] equipment rental agreement (\$16,938.52), the Company must make the equipment available for the Provider to collect.

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## 2. Background

The Company authorised the Representative for this complaint.

Until February 2017, another telecommunications company provided the Company's services. The Company owned the equipment it used to access those services.

The Representative says the Provider contacted the Company uninvited and offered to sell services and equipment. Later, a salesperson attended the Company's business premises to discuss what products the Provider could offer. The Representative said the Provider recommended a [brand, model] phone system, which would be able to operate on the NBN network when it became available.

On 7 February 2017 the Company entered into a 60 month "[plan name]" contract with the Provider for telecommunications services.

The services were:

- three lines each billed at \$20 per month,
- a fax line billed at \$31.77 per month
- an ADSL internet service billed at \$31.77 per month,
- professional messages on hold, and
- installing seven handsets and programming two spares.

The equipment rental agreement was for a new [model] phone system, financed through [the finance company].

In June 2018, the Company transferred its services to another telecommunications provider and stopped using the [model] phone system when its new provider advised the [model] equipment had no digital card and could not be used on the NBN network.

### **3. The complaint and the Provider's response**

The Company complained:

- there were ongoing service issues with the phone, internet and fax services,
- the Provider charged a \$250 bond for a dongle that did not work, and
- the Provider did not tell the Company there would be a one-off charge of \$353.37 to install a new line for a fax.

In response, the Provider:

- said the Company's staff turned the Provider technicians away when they went to the Company's premises to complete work,
- agreed the Company reported faults with the service, but said the faults were resolved within appropriate timeframes when the Company allowed technicians access to address the faults,
- said the Company breached the network agreement when it ported its services away before the end of the contract, triggering early termination charges of \$9,160.27 incl GST,<sup>1</sup>
- acknowledges it has not refunded the cost of the bond for the dongle which did not work, and
- said it told the Company multiple times there would be a charge to install the new fax line.

### **4. My proposed resolution to this complaint and the parties' responses**

On 29 April 2019, I sent the Provider and the Company my proposal for resolving the complaint. I proposed that the Provider:

- accept the Company's cancellation of the service contract without charge,
- accept the return of the rejected equipment from the Company,
- pay the Company for the costs of cancelling the rental agreement, 15 working days after receiving evidence of the costs to cancel
- refund \$250 for the bond the Provider charged the Company for a dongle, and
- reverse \$353.37 for the installation of the fax line and \$12.71 for the service charges for the fax for the period it was not working.

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<sup>1</sup> Charged on 15 June 2018

On 30 April 2019, the Company accepted my proposed resolution.

On 15 May 2019, the Provider accepted my proposed resolution that it:

- cancel the service contract between the Provider and the Company without charge,
- refund the \$250 bond for the dongle, and
- reverse the \$353.37 charge for installation of the fax line and \$12.71 for service charges.

The Provider rejected my proposal that it accept cancellation of the equipment contract and pay out the remaining balance. The Provider said:

- there is nothing wrong with the equipment
- the Provider is not in a position to pay out the lease agreement.

## **5. Reasons**

My reasons for my decision are I am satisfied:

- It is fair and reasonable for the Provider to confirm it has cancelled the Company's services contract
- the Provider was not entitled to charge for the dongle, fax line or installation
- the Provider misled the Company about the suitability of the equipment for the services
- the Provider must compensate the Company for misleading it about the cost of the equipment finance
- After paying the Company for cancelling the equipment rental contract, the Provider is entitled to take possession of the equipment

## **6. The Provider to confirm it has cancelled the Company's services contract**

I am satisfied it is fair and reasonable for the Provider to confirm by formal written notice to the Company that the services contract is cancelled and there is no amount owing to the Provider.

In response to my proposed resolution, the Provider said it would cancel the Company's services contract. However, the Provider has not provided confirmation that it has cancelled the service contract and that there is no further amount owing to the Provider. In my view, it is reasonable that the Company has confirmation for its records that nothing further is owed for its records.

## **7. The Provider was not entitled to charge for the dongle, fax line or installation**

I am satisfied the Provider was not entitled to charge for the dongle, fax line or installation.

The Provider did not reject this aspect of my proposed resolution and should now refund the costs of the dongle, fax line and installation charges within five business days of receiving the Company's acceptance of this decision.

## **8. The Provider misled the Company about the suitability of the equipment for the NBN Network**

I am satisfied the Provider misled the Company about the suitability of the equipment for the NBN Network.

In rejecting my proposed resolution that the Provider accept cancellation of the equipment finance agreement, the Provider said there is nothing wrong with the equipment it sold the Company and the Provider is not in a position to pay out the lease agreement between the Company and [the finance company].

The Representative told my office the Company agreed to buy the equipment because the Provider told them it would be compatible with the NBN network, when NBN services became available.

However, when the Company transferred its services to its new provider in May 2018, the new provider told the Company the equipment could not be used to connect digital phone lines. A copy of the email from the new provider to the Company is attached at Appendix One.

The Company had to buy new equipment to connect to the NBN network at a cost of \$7,000.

## **9. The Provider must compensate the Company for misleading it about the compatibility of the equipment**

I am satisfied the Provider must compensate the Company for misleading it about the compatibility of the equipment.

The remedy for misleading conduct is not to make the promise come true. Instead it is to compensate for any loss caused by reliance on the conduct.

The Representative said if they had not been misled, the Company would have continued to use its existing equipment, which it owned outright.

I accept that this is a reasonable option that was open to the Company, particularly since the NBN network was not operational at the Company's premises when it agreed to purchase the Provider services and the equipment or at any time it had the

Provider's services.

[The finance company] sent the Company a demand for \$16,938.53 on 6 September 2017. A copy of the demand is shown in Appendix Two.

The Provider should pay \$16,938.52 to the Company within five business days of receiving the Company's written acceptance of this decision.

**10. After paying the Company the costs of cancelling the equipment rental contract, the Provider is entitled to possession of the equipment**

I am satisfied that, after paying the Company the cost of cancelling the equipment rental, the Provider is entitled to take possession of the equipment. The Company must make this available for the Provider to collect.

Judi Jones

Telecommunications Industry Ombudsman

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## 11. Appendix One: [new provider] email to the Company

[screenshot of email]

**12. Appendix Two: Final Demand and Termination Notice from [the finance company]**

[copy of notice]