

Preliminary View – 7 July 2020 (De-identified for publication)

Service provider	The Provider
Account holder	The Consumer
Date	7 July 2020

This document sets out my Preliminary View on how this complaint about the Provider from the Consumer should be resolved.

My Preliminary View is that the Provider is not required to take any further action in relation to this complaint.

The Preliminary View is what I believe to be a fair and reasonable outcome, having regard to:

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

7 July 2020

1 Background

On 3 April 2020, the Provider's website showed 12.9-inch iPad Pro devices for sale at no cost with a \$15 per month plan.

The Consumer signed up for a 12-month plan online and received confirmation that the iPad would be delivered.

The Provider later cancelled the order.

2 The complaint and the Provider's response

The Consumer says he has a binding contract with the Provider to supply the iPad for free.

The Consumer also believes the Provider has breached various provisions of the Australian Consumer law, relating to misleading or deceptive conduct, unfair contract terms, misrepresentation in relation to goods and services and bait advertising.

The Provider says there was a technical error that showed the iPad as free.

3 Reasons

The reasons for my view are:

- The publication of the \$0.00 price was an error
- The Consumer has suffered no loss
- The upfront price show was not an unfair contract term
- The Telecommunications Industry Ombudsman is not a regulator

3.1 The publication of the \$0.00 price was an error

I am satisfied the publication of the \$0.00 for the iPad was an error.

The Provider told this office the iPads retail for \$2,069 and I accept this is correct.

In my view, it should have been evident to anyone who saw the listing that it had been made in error.

3.2 The Consumer has suffered no loss

I am satisfied the Consumer has suffered no loss.

Even if the Consumer was misled by the error, the remedy for misleading conduct is not to make the promise or offer come true. Instead, it is to look at the financial detriment suffered.

To establish detriment, the Consumer would need to show that he is financially worse off

as a result relying in good faith on the accuracy of the Provider's statement on its website that the iPad would be free.

While the Consumer may be disappointed, even if he was misled to believe the Provider was giving away free iPads with a \$15 per month plan, he has not suffered any financial loss as a result.

3.3 The upfront price shown was not an unfair contract term

I am satisfied the upfront price of \$0.00 show on the Provider's website is not an unfair contract term under the Australian Consumer Law.

Section 26 of the Australian Consumer Law expressly excludes the upfront payable under a consumer contract from the matters that can be unfair contract terms.

3.4 The Telecommunications Industry Ombudsman is not an industry regulator

The Telecommunications Industry Ombudsman is not a regulator for the Telecommunications industry.

Bait Advertising is not a matter that falls within the Ombudsman's jurisdiction. The Consumer is free to raise this aspect of his complaint with the Australian Competition and Consumer Commission.

Jillian Brewer

Assistant Ombudsman, Dispute Resolution

Telecommunications Industry Ombudsman
