

## **Preliminary View – 14 September 2021 (De-identified for publication)**

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This document sets out my Preliminary View on how this complaint about the Telco from Small Business Consumer should be resolved. Small Business Consumer authorised the Consumer as its representative in this complaint.

My Preliminary View is that the Telco is not required to take any action to resolve 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.
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## 1 Background

Small Business Consumer has broadband (FTTC) internet, voices services (0X 9XXXXXX0, 0X 9XXXXXX1, 0X 9XXXXXX2 and 0X 9XXXXXX3), Hunt Group line (0X 9XXXX XXX4) and a 2-port adaptor (0XXX XXX XX5) with the Telco. The Telco charges \$250 a month for these services.

## 2 The complaint and the Telcos' response

The complaint is about a delay in the connection of the services.

The Small Business Consumer says the voice services and internet service are used for business purposes by Small Business Consumer and Business Two. They say the businesses suffered loss due to the service issues.

The Small Business Consumer says the Telco should compensate Business Two by paying \$12,031 in business loss because the Telco knows the services are used for business purposes.

The Telco says Business Two is not the account holder.

## 3 The recommended outcome and the parties' responses

The Telecommunications Industry Ombudsman issued a recommended outcome that the TIO will only consider compensation claims from the account holder.

The Telco accepted the recommended outcome.

The Small Business Consumer rejected the recommended outcome because Small Business Consumer and Business two are separate companies, and they do not combine them because they are separate for tax purposes.

## 4 Reasons

The reasons for my preliminary view are I am satisfied:

- The TIO can only consider a complaint from the account holder
- The account holder is the Small Business Consumer
- The Small Business Consumer cannot claim loss on behalf of Business Two

### 4.1 The TIO can only consider a complaint from the account holder

The TIO can only consider a complaint from the account holder.

In order to make a claim for business loss at the TIO, the entity making the claim must be able to show that the Telco has breached an obligation owed to it, as the account holder, and that this has led to loss.

### 4.2 The account holder is the Small Business Consumer

The invoice for the account is addressed to Small Business Consumer Pty Ltd.

The order form for the services is in the name: Small Business Consumer, and includes the request for 0X 9XXX XXX1, which is the number used for Business Two. There is no information to support a conclusion that the Small Business Consumer, or anyone acting on behalf of the business, asked for separate accounts for Small Business Consumer and Business Two. All services fall under the Small Business Consumer's account.

#### **4.3 The Small Business Consumer cannot claim loss on behalf of Business Two**

The Small Business Consumer submitted a business loss claim in the name of Business Two. I cannot consider a claim from Business Two, because it is not the account holder.

I have conducted ASIC searches of Business Two and Small Business Consumer. Both entities are private companies. Under Australian law, corporate entities are legal persons. Each company is a separate legal entity.

The contractual relationship the Telco has is with Small Business Consumer, not with Business Two.

Louise Halliday

**Adjudicator**

**Telecommunications Industry Ombudsman**

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