

Preliminary View – 15 March 2023

Deidentified

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

My Preliminary View is the provider should provide the consumer with a credit to her provider account of \$986.


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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ELIGIBILITY

 **Important:** use this [redemption link](#) for the Samsung Galaxy S22 pre order bonus

- Pre-order period is 7am 10 February to 11:59pm 3 March (AEDT)
- Samsung Galaxy Tab A8 and gift pack - available to new and existing Consumer and Small Business customers. Please let customers know to allow up to 60 days delivery of the Samsung Galaxy Tab A8
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- Available in all channels – TRR, TCC and Online
- Must take up the Samsung Galaxy S22 on any DPC or buy the device outright
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DETAIL

Market wide Samsung Gift Pack Details

Choose from the gift packs that correspond to the Samsung Galaxy S22 Series handset

GWP Offer Details	S22 Ultra	S22 Plus	S22
Telstra Exclusive Offer	Bonus Samsung Galaxy Tab A8 valued at \$529 RRP		
Samsung Market Wide Offer Travel Pack	Total Value: \$326 RRP Dual Port Car Charger 25W + 15W - Black 65W Super Fast Wall Charger - Black Wireless In Car Charger (Vent Mount) - Black Leather Back Cover - Black	Total Value \$247 Dual Port Car Charger 25W + 15W - black 65W Super Fast Wall Charger - black 65W Super Fast Wall Charger - black	Total Value \$99 Wireless In Car Charger (Vent Mount) - black
Samsung Market Wide Offer Power Pack	Total Value \$337 65W Super Fast Wall Charger - black Trio Wireless Charger - black Leather Back Cover – black	Total Value \$258 65W Super Fast Wall Charger - black Trio Wireless Charger - black	Total Value \$159 Trio Wireless Charger - black
Samsung Market Wide Offer Audio Pack	Total Value \$302 Buds 2 – White Buds Case - Simpsons Donut - Random Buds Case - Clear	Total Value \$243 Buds 2 – White Buds Case - Clear	Total Value \$219 Buds 2 – White

1 Background

The consumer has a mobile service with the provider on account number AAAAAAA.

2 The complaint and the provider's response

The consumer's complaint relates to two primary issues:

1. She contacted the provider to accept a promotional offer, but when the order was eventually accepted, the provider was unwilling to honour the promotion. The promotion related to a Samsung Galaxy Tab A8 and an accessories pack (valued at \$986).
2. She needed a new phone number for safety reasons before 18 March 2022. The new phone number wasn't provided or activated until 24 March 2022.

The consumer wanted the provider to:

- Provide \$2,000 in total compensation, comprised of:
 - \$986 for the value of the Samsung Galaxy Tab A8 and the accessories pack.
 - \$163.29 for the provider's failure to honour the promotional offer.
 - The remainder for the inconvenience, stress and missed opportunity to accept a surgery booking when the provider delayed in providing her a new phone number.

The provider:

1. Acknowledged it cancelled her order for the promotional products because the consumer failed its credit check. It says it does not need to offer her the promotion again, nor provide her with any credits or compensation for cancelling the order.
2. Agreed the consumer's order for a new phone number was rejected on 3 March 2022 and 17 March 2022. It says, on the same day, it told the consumer to go to the store to place the order and collect the handset and SIM card. The consumer didn't attend the store until 24 March 2022.

The provider has, at various times throughout the complaint, put forward offers between \$994.29 and \$1,500 to the consumer. The consumer rejected these offers. The provider then withdrew the offers.

3 The recommended outcome and the parties' response

On 16 September 2022 the Telecommunications Industry Ombudsman (TIO) issued a recommended outcome that found the provider did not need to provide any credits or compensation to the consumer because:

- The provider's original offer to provide \$831 was more than reasonable to address the issue of the cancelled order for the promotional products.

- The provider was not responsible for the losses the consumer incurred when there was a delay in providing a new number to her
- The provider is not required to waive early termination or device pay-out fees for the consumer's mobile service
- The provider is not required to pay compensation for non-financial loss.

The provider accepted the TIO's recommended outcome.

The consumer rejected the recommended outcome because:

- She was told on the phone by the provider that, because she provided her ID, she was entitled to accept the promotional offer.
- She said the provider's original reason for rejecting her request for a new number was because she was sent a payment link via the provider app, that she let expire. She said this was untrue.
- She spent countless hours stressing about not having a new phone number, and she's now on a three-year waiting list for surgery – had she had the new phone number, she wouldn't be on the waiting list.

4 Reasons

My Preliminary View is that the provider should credit the consumer's account \$986. This is because:

- The provider made the consumer believe that she would receive the promotional offer despite the order being placed late
- However, the provider was entitled to place any conditions on the orders that the consumer submitted, and the delay in activating the phone service wasn't its fault

4.1 The provider should honour the \$986 credit to the consumer's account

4.1.1 The provider made the consumer believe she would still be entitled to the promotional order

Based on the information provided to us by the provider and the consumer, I have prepared a short chronology, that outlines the key events throughout the complaint issues (Appendix A).

The chronology makes it clear:

- The provider rejected the consumer's order on two occasions because it needed to identify her in person, using identification documents.
- On 17 March 2022, it made the internal decision to honour the promotion.

- On 24 March 2022, when the consumer spoke to the provider store representative, she was told at the time of submitting the order that she 'should' get the promotional offer.

In my view, the provider made the consumer believe that she would still be able to receive the promotional offer despite the order being accepted after the offer concluded. It is likely that the consumer entered into the contract with the provider on the belief that she would still receive the offer, and it would be unconscionable for the provider to now deny that it has to provide the promotional offer to her.

4.1.2 The provider should provide the consumer with a credit to her provider account of \$986

Because the provider should honour the promotional offer, it should provide the consumer with a credit totalling \$986.

Generally, the TIO cannot force a provider to make a promise come true. Instead, the TIO can only require a service provider make the customer whole – that is, the provider should address the detriment suffered by the consumer for its failure to meet its promises.

In this case, the TIO cannot compel the provider to provide the Samsung Galaxy Tab A8, the Samsung gift pack, and the Disney+ subscription. It should however provide a credit or refund to the consumer's account for the equivalent value of those items.

The value, at the time of the consumer accepting the offer, was \$986. It was comprised of (Appendix B – The provider's promotional offer details):

- The Samsung Galaxy Tab A8 (with a recommended retail price of \$529).
- A Samsung Market Wide Offer Power Pack (RRP of \$337) (note: The consumer placed the order for the Samsung Galaxy S22 Ultra).
- Disney+ subscription for 12 months (valued at the time at \$120).

This is the amount the provider should credit the consumer's provider account. If this puts the account in credit, the consumer can request a refund of the balance to her bank account or via cheque.

4.2 The provider did not fail in any obligation to provide the consumer with a new mobile service number

The consumer's claim for non-financial loss stems from the delay in providing her a new mobile service. The consumer is claiming compensation because:

- She experienced significant stress and inconvenience because she feared for her safety during the delay in providing the service.
- She missed a phone call regarding an important surgery she needed. She says, had she had the new phone service, she would have been able to book the

surgery. As she didn't have the phone service, she's been placed on a 3-year waiting list for the surgery.

In my view, the provider was entitled to put any conditions it saw fit on the consumer's contract for a new mobile service number, and as a result, the provider does not need to provide any compensation for stress and inconvenience.

4.2.1 The provider is entitled to put any conditions on a new contract with a customer that it wishes

While it's my view the provider should honour the promotional offer and it has failed in providing that promotional offer, the consumer's request for non-financial loss compensation derives from the delay in providing her with a new mobile service number.

The TIO only considers non-financial loss for complaints where the provider has failed in its obligations, and we will only consider loss deriving from that failure.

In this case, it's my view the provider has not failed in its obligations to the consumer.

In assessing complaints, the TIO has regard to what is fair and reasonable, taking into account the law and good industry practice. A common and widely regarded principle of law is that a person or company is free to contract with who it likes on any conditions that it sees fit, provided those conditions are not unlawful.

The Chronology in Appendix A shows when the provider rejected the orders the consumer placed, and the reasons why it did so. It explained why it rejected those orders to the consumer within one business day of it rejecting the order.

Neither of these rejections were unlawful, and the provider advised the consumer why it rejected those orders.

Because of this, I do not consider the provider needs to provide any compensation for the stress and inconvenience the consumer spent trying to contract with the provider.

Senior Lead – Dispute Resolution
Telecommunications Industry Ombudsman

Appendix A: Chronology of events

Date/Time	Event	Source
February 2022	<p>The provider advertises its promotional offer.</p> <p>Its offer is, if a customer preorders the Samsung Galaxy S22 handset before 3 March 2022, it will provide the customer:</p> <ul style="list-style-type: none"> • A free Samsung Galaxy Tab A8 • A Samsung Gift Pack • 12-month subscription to Disney+ <p>The promotion ends midnight 3 March 2022.</p>	The provider's promotional offer – Appendix B
3 March 2022	The consumer preorders the Samsung Galaxy S22 with the promotional offer online.	Customer interaction notes
3 March 2022	The provider rejects the order, requesting the consumer attend a The provider store to provide identification in person.	Customer interaction notes
4 March 2022	The provider confirms it has identified the consumer using her Medicare card, Bank Card, Working with Children's Check and Rates Notice. It asks the consumer to wait 15-30 minutes before submitting the order again.	Customer interaction notes
9 March 2022	The provider contacts the consumer (by phone and letter) and advises her that she can place the order but there's no guarantee it will be able to provide the promotional bonuses (the Samsung Galaxy Tab A8, the gift pack and the Disney+ subscription)	Customer interaction notes
16 March 2022	The provider rejects a further order from the consumer, noting that its system flagged it as fraudulent. It acknowledges she needs to visit the store to complete the order.	Customer interaction notes
17 March 2022	<p>The provider speaks with the consumer.</p> <p>The consumer says she needs the new phone service urgently as she fears for her safety.</p> <p>The provider tells her she needs to visit the store. It provides her with the provider store details.</p>	Customer interaction notes
17 March 2022	The provider leaves an internal note on the file: 'CX order for a Samsung s22 was flagged as fraudulent, due to this CX must go in store and show relevant ID to continue with the purchase. The store must also honour the promotion entitled to the customer.'	Customer interaction notes
24 March 2022	<p>The consumer visits the provider store.</p> <p>The consumer records the interaction with the provider store, where the representative says she 'should be able to get' the promotion, because it 'wasn't her fault'.</p> <p>The order is submitted and accepted.</p>	<p>Voice recording supplied by the consumer</p> <p>Order form details supplied by the provider</p>

Appendix B: The provider's promotional offer

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