Telecommunications Industry Ombudsman

Submission to Treasury's Consultation on

Unfair Trading Practices Consultation Regulation Impact Statement

November 2023

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Introduction

Thank you for the opportunity to comment on Treasury's Consultation Regulation Impact Statement (RIS) about unfair trading practices in the Australian economy.

As an industry ombudsman scheme, the Telecommunications Industry Ombudsman receives complaints from residential and small business consumers about telecommunications products. This includes complaints about the sales and customer service practices of telcos.

In our complaint-handling work, we deal with complaints involving telco practices that could be considered unfair and may not be adequately covered by existing consumer protections in the Australian Consumer Law (**ACL**). These potentially unfair trading practices (**UTPs**) generally involve a telco taking advantage of its superior bargaining power or access to information to gain an unfair advantage in its relationship with consumers.

We support a prohibition on UTPs in the ACL

Through our complaints, we see the impacts of unfair telco practices across the whole consumer lifecycle: from sales practices where consumers are given incomplete information about telco products, to customer service practices that make it difficult for consumers to cancel a service. We receive complaints from consumers who are struggling with their provider's inaccessible customer service channels, or whose provider altered their service contract unilaterally.

Where unfair practices occur, consumers can be left locked into paying for products they do not want, or unable to manage an issue with their service. This can have heightened detrimental effects for consumers experiencing vulnerability, who may have fewer options when dealing with an issue, or less capacity to absorb unwanted costs.

Reform must work effectively with existing ACL protections and be simple for business and consumers to understand

At this time, we do not have a view on the preferred reform option for UTPs.

We encourage Treasury to consider how UTPs protections are intended to operate alongside existing ACL protections when determining which reform option is preferable. The structure of any new prohibition must operate effectively with the current prohibitions in the ACL, and where possible, avoid overlap with existing protections. This would promote clarity in the protections and make it easier for consumers and businesses to interpret them.

It may also be beneficial for the prohibition to be accompanied by guidance specifying particular UTPs that would be covered by the prohibition. This could be achieved by including a list of prohibited practices in the ACL itself, or in other instruments such as regulations or guidelines. Providing a list of specified practices could provide a level of certainty for consumers and businesses about what practices are prohibited.

We see potential UTPs in the telco sector

Through the complaints received by our office, we have observed four broad categories of possible UTPs:

- unilateral contract variations with unfair consequences for consumers
- telcos failing to give consumers important information about products at sign-up
- inaccessible customer service processes
- processes and practices that make it difficult for consumers to cancel services.

We encourage Treasury to recommend a reform option that is broad enough to cover these practices.

1. Unilateral contract variations

We sometimes receive complaints from consumers who say their telco altered the terms of their service contract without their permission, for example by changing the service inclusions of their plan or by increasing the price of their services.

Telcos often structure their standard form contracts to allow them to make unilateral changes to a consumer's service agreement. Where a telco relies on its standard agreement to make such changes, the agreement usually requires the telco to give the consumer notice of the change. It will also generally require the telco to allow the consumer to cancel their service without paying termination fees (if the change disadvantages the consumer).

We acknowledge telcos need a degree of flexibility in how they manage their service offerings. For example, sometimes a retail service provider may need to vary a contract to account for changes its wholesaler has made to existing wholesale arrangements. From time to time, this may require unilateral changes to service contracts. Where this is done with sufficient notice and consumers are given an opportunity to cancel without penalty, it is likely to be fair conduct.

However, we hear from consumers whose service plans were changed in circumstances where they did not have a fair opportunity to cancel their service. This is often because although their telco was not going to charge the consumer an exit fee, cancelling the service would also cancel a linked device contract, triggering device payout fees. Sometimes, this can have the unfair result of consumers being required to pay off a device much sooner than they had agreed to, even though it was their telco that prompted them to cancel, by unilaterally changing the terms of their contract.

Case Study: BranchTel changed the price of Max's service while they were still paying off their handset*

Max entered a contract with BranchTel for mobile services. As part of this contract Max received a handset to be paid off over 24 months. Max agreed to pay for both the services and handset together.

Some months into the contract, BranchTel told Max it would increase the monthly price of their mobile service. Max thought they were still on a fixed-term contract as they had not yet paid off their handset. BranchTel said Max had two contracts: one for the mobile service and another for the handset. BranchTel said it was entitled to change the price of the mobile service under its standard contract, but Max was free to cancel their service contract if they were unhappy. However, if Max did cancel their service contract, they would need to pay off the remaining cost of their handset in a lump sum.

Max thought this was unfair and made a complaint to our office. After we referred Max's complaint to BranchTel, it resolved the complaint by covering the cost of its price increase until Max paid off their handset. **Names of all parties have been changed.*

2. Inadequate information at sign up

Telcos should give consumers all the information they need to make an informed decision before entering a contract.

We receive complaints from consumers who tell us they did not fully understand the requirements or features of their telco service when they signed up for it. Consumers often report this occurred because a sales representative omitted to give them important information (or failed to draw their attention to that information) during the sales conversation.

It is common for a telco contract to be long and complex. Contracts are often formed from multiple documents including the telco's Standard Form of Agreement, the service's Critical Information Summary,[1] and various policy documents published by the telco.

Despite this complexity, consumers tell us that the reality of telco sales interactions is that they are very quick, and consumers can feel pressured into signing a contract without fully understanding what they are signing up for. As a result, consumers rely heavily on the representations made by sales representatives.

When important information, such as method of payment, service inclusions (like eligible countries for included international calls), or the minimum cost of cancelling a service is omitted from sales discussions, it can lead consumers to purchase products that are unsuitable for them. In some cases, this can lead to financial stress or hardship as consumers struggle to pay for their service and products. For example, a consumer experiencing payment difficulties may enter into a contract where they can only make payments automatically by direct debit. As we have highlighted in other publications, automatic payment methods can be uniquely unsuitable for financially vulnerable consumers, as they can reduce consumers' capacity to control their payments.[2]

Some consumers tell us they did not initially realise cancelling a service contract would also cancel a linked device contract. These consumers later discovered that cancelling their service meant they would need to pay off the entire cost of their telco equipment in a shorter period of time than originally agreed. Other consumers tell us their provider did not explain how its international roaming charges worked, resulting in them incurring several thousand dollars of extra charges.

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[1] Under clause 4.2 of the Telecommunications Consumer Protections Code, telcos are required to supply concise summaries of each of their current offers, called 'Critical Information Summaries'.

[2] See TIO submission to Stage One of the 2024 Telecommunications Consumer Protections Code Review, June 2023, page 32.

As Treasury highlighted in the Consultation RIS, it can be difficult to successfully make out a claim of misleading or deceptive conduct under section 18 of the ACL where that claim is based on a firm's omissions to give consumers information.

Case Study: BlockTel failed to tell Alan he needed to pay for his service by direct debit*

Earlier this year, Alan contacted BlockTel to upgrade his mobile device. After Alan signed up for his new device, BlockTel began direct debiting the payments from his account. Alan was surprised by this, because he already had services with BlockTel and was accustomed to paying via BPay. He did not want to use direct debit to pay for his services.

When Alan contacted BlockTel to enquire about the direct debit payments, it told him he had agreed to sign up for a service that could only be paid by direct debit. Although the terms and conditions for Alan's new service required him to pay for it by direct debit, BlockTel's sales representative had not drawn this to his attention.

When Alan complained to our office, we were not able to require BlockTel to allow him to keep paying via BPay. Alan was left with a service that required payment via a method that was not suitable for him.

**Names of all parties have been changed.*

3. Inaccessible customer service

As we outlined in our 2023 Systemic Investigation Report 'A Time for Change', we regularly deal with complaints from consumers who say their telco's customer service practices presented barriers to them dealing effectively with a complaint or enquiry.[3] Problems consumers report when using their telco's customer service processes include:

- being unable to contact their telco because of long call centre wait times and being transferred between departments
- having to communicate with automated chatbots that were unable to resolve their concerns
- receiving contradictory or incorrect information about their enquiry or complaint
- not being given adequate assistance to complete their telco's customer identity authentication process.[4]

Sometimes, we see telcos take an inflexible 'one-size-fits-all' approach to customer service. When this occurs, a telco might require its customers to make enquiries online, or design its non-preferred customer service channels in a way that discourages consumers from using them. For example, we have investigated a telco whose customer service number connected to a complicated interactive voice recording (IVR), which prompted the caller to select from several different options. Most of the options played a recorded message directing the caller to make their enquiry online, and terminated the call without connecting it to a customer service representative.

Practices that unnecessarily restrict the way a consumer can communicate with their telco may be considered unfair. This is because they can unreasonably impede the consumer's access to after-sales support for their service. These practices may suit the telco's operational preferences, but do not recognise consumers' individual communication needs. Where consumers are unable to reach their telco to get help, it can leave them with ongoing problems affecting their service or account.

Case Study: Kaname's telco did not give her adequate assistance to complete its identity verification process*

Earlier this year, Kaname decided to cancel her mobile service with Propeller Net. After Kaname cancelled the service, she received a notice from Propeller Net saying she would need to pay around $800 for remaining charges on her mobile handset. Kaname was unsure whether this amount was correct and thought she might have been overcharged.

Kaname called Propeller Net to ask about the notice, but Propeller Net refused to discuss it with her. Propeller Net said it needed to identify Kaname by SMSing a code to her

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[3] TIO Systemic Investigation Report, 'A Time for Change', June 2023, Finding 1 (pages 11 – 13).

[4] Since 30 June 2022, telcos have been obliged under the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022* to authenticate their customers' identity using multi-factor authentication (MFA), before completing high-risk transactions. The Determination makes several different MFA methods available, including flexible processes for consumers in vulnerable circumstances.

phone, but Kaname had changed her mobile number and was not able to receive the code. Kaname explained this, but the Propeller Net representative did not help her to identify herself a different way. Instead, the representative told Kaname they could not help her and ended the call.

After we referred Kaname's complaint to Propeller Net, it helped her to complete its identity verification process and resolved her complaint.

**Names of all parties have been changed.*

Systemic Investigation Case Study: Consumers could not contact Pebble Telco because of long wait times and redirect loops*

We received complaints from consumers who said they had difficulty making a complaint or customer service enquiry to Pebble Telco. Several of these consumers were in vulnerable circumstances. Some consumers were pensioners who needed to ask for help with a billing problem. Others were experiencing financial hardship.

These consumers told us that:

- they had to wait for a long time in Pebble Telco's call centre queue
- Pebble Telco's chatbot could not resolve their issue and repeatedly redirected them through the same messages.

We notified Pebble Telco of these issues and began a systemic investigation. Following our investigation, Pebble Telco made improvements, so it was easier for consumers to contact it. Pebble Telco:

- updated its call queue menu options so consumers had two more direct pathways to make a complaint
- updated the 'Contact Us' section of its website to include telephone information for consumers in a clear and visible format
- added a direct link to its Complaint Handling Policy on its website.

**Names of all parties have been changed. This case study appeared in longer form in our June 2023 Systemic Investigation Report 'A Time for Change'.*

4. Difficult cancellation practices

We receive complaints from consumers who say they had difficulty cancelling their telco services.[5] Sometimes this occurs because a provider places formal requirements on cancellation procedures that consumers are unaware of or may have difficulty meeting (such as requiring cancellation requests to be submitted over the phone or in writing). Others report their telco's customer service staff repeatedly tried to convince them not to cancel, or otherwise delayed processing their cancellation request. In some cases, consumers tell us a telco failed to action a cancellation request at all, and continued to charge them for services they did not want or need.

These kinds of cancellation practices can present significant barriers for consumers wanting to cancel their service, often leading to unwanted ongoing financial liabilities and frustration.

Problems with cancellation processes can also be exacerbated by general difficulties in contacting a telco. We recently investigated a telco whose customers told us they had difficulty contacting the telco's customer service area, which was unresponsive. Several consumers said they needed to reach the customer service area to cancel their service, but were unable to do so, so the telco continued to charge them.

In some cases, such as the case study below, a consumer may call their provider to cancel, but instead is pressured into signing up for a new service. When providers delay actioning a consumer's request to cancel, the consumer continues to be liable to pay for a service they no longer want. We support protections against UTPs that would promote consumer autonomy by prohibiting these kinds of cancellation practices.

Case Study: ChronoCall pressured Prue to sign up for new services when she called to cancel*

Prue had a mobile service with ChronoCall. Prue called ChronoCall to cancel her service. The ChronoCall representative Prue spoke to was reluctant to process the cancellation. Instead of cancelling Prue's service, the representative pressured her into signing up for new services she did not really want. Eventually, ChronoCall convinced Prue to sign up for a tablet device and mobile broadband service.

When Prue contacted ChronoCall to complain about the sale and ask to cancel the tablet contract, ChronoCall did not respond for three months.

**Names of all parties have been changed.*

[5] TIO Systemic Investigation Report, 'A Time for Change', June 2023, pages 15 – 16.