

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B by Sensis Pty Ltd (ACN 007 423 912)

A Person giving this undertaking

- 1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Sensis Pty Ltd (**Sensis**) of 222 Lonsdale Street, Melbourne, Victoria 3000 for the purposes of section 87B of the *Competition and Consumer Act 2010 (Cth)* (**Act**).

B Background

- 2 Sensis is incorporated under the *Corporations Act 2001 (Cth)*.
- 3 Sensis is a privately owned company which provides advertising and marketing services to businesses in Australia under its own brand, and using household names, Yellow Pages and White Pages. These services include bundled products comprising print and online advertising known as 'Targeted Solutions' for the Yellow Pages business and 'White Pages Network Packages' for the White Pages business (**Bundled Print and Online Packages**).
- 4 In the 2015/2016 financial year, the vast majority of Sensis' customers purchased a Bundled Print and Online Package.
- 5 In 2016, the ACCC commenced an investigation into Sensis after receiving complaints from consumers about Sensis' automatic renewal and contract cancellation processes and following previous engagement that Consumer Affairs Victoria had with Sensis on similar issues. Sensis has worked cooperatively with the ACCC to resolve its concerns, including by providing this undertaking.

C Conduct of concern

- 6 Since at least 1 January 2015 to August 2016, Sensis did not adequately disclose the automatic renewing nature of Sensis' contracts and Sensis' cancellation processes on Sensis' website (www.sensis.com.au). In addition, Sensis may not have adequately disclosed Sensis' automatic renewal terms and cancellation policies in certain communications with Bundled Print and Online Package customers during and after the contracting process.
- 7 At the time the ACCC contacted Sensis regarding its concerns in relation to Bundled Print and Online Packages, Sensis was conducting a review of its terms and conditions. After being made aware of the ACCC's concerns, Sensis' review was expanded to include a review of its contracting systems and processes to determine how they could be improved to minimise the risk of customers being misled as to the existence or operation of Sensis' automatic renewal terms and cancellation processes. As a result, Sensis implemented the following changes in relation to Bundled Print and Online Packages:
- (a) Sensis updated its website www.sensis.com.au to include a summary of key terms on each product page (**Key Terms**). The Key Terms include:
- (i) that Sensis' advertising services are subject to a stated minimum period;
 - (ii) that certain Sensis' advertising services automatically renew for a further stated period following expiry of the minimum period, unless cancelled by the customer prior to the renewal date (**Automatic Renewal Term**);

- (iii) that the customer must cancel their advertising service(s) before close of advertising for the relevant directory (**book Close Date**) to avoid cancellation fees; and
 - (iv) that the customer can cancel their advertising service(s) by phoning or writing to Sensis.
- (b) Sensis updated its contracting processes so that each of the Key Terms is required to be disclosed to customers and potential customers:
 - (i) in any written quote provided to the customer prior to entering into a contract with Sensis;
 - (ii) by the sales person during telephone and in-person sales prior to entering into a contract with Sensis; and
 - (iii) in documents provided to the customer after entering into a contract with Sensis which confirm the customer's purchase.
- (c) Sensis introduced a requirement for its sales representatives to:
 - (i) obtain the customer's specific agreement to the automatic renewal term when entering into a voice recorded contract by telephone; and
 - (ii) specifically draw the customer's attention to the automatic renewal term prior to entering into a contract during in-person sales.
- (d) Sensis is contractually required to take all reasonable steps to send an automatic renewal reminder to each affected customer at least 4 weeks before the book Close Date.
- (e) Sensis developed and implemented new training on Sensis' contracting processes for all Sensis representatives responsible for dealing with customers in respect of sales, product cancellations or complaints. Regular refresher training will be conducted for these staff and new customer facing staff will be required to undertake this training as part of their induction.
- (f) Sensis introduced a new complaints page on its website which provides customers with information about how to lodge a complaint with Sensis by phone, email or via an online form on the Sensis website.

8 Since 1 July 2014 Sensis has refunded or credited approximately 10,000 Yellow Pages and White Pages customers who were affected by Sensis' automatic renewal terms and cancellation processes in relation to Bundled Print and Online Packages.

D Relevant provisions

- 9 The ACCC is responsible for the enforcement of the Australian Consumer Law (**ACL**) contained in Schedule 2 of the Act.
- 10 Section 18 of the ACL prohibits a person in trade or commerce from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.
- 11 Section 29(1)(i) of the ACL prohibits a person in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, from making false or misleading representations with respect to the price of goods or services.

E Contraventions

- 12 Sensis acknowledges that the conduct described at paragraph 6 above may have contravened sections 18 and 29(1)(i) of the ACL.

- 13 Sensis has provided this undertaking to the ACCC in accordance with section 87B of the Act.

F Commencement of undertaking

- 14 This undertaking comes into effect when:
- (a) the undertaking is executed by Sensis; and
 - (b) the ACCC accepts the undertaking so executed.
- 15 Upon commencement of this undertaking, Sensis undertakes to assume the obligations set out in section G of this undertaking below.

G Undertaking

Refunds

- 16 Sensis undertakes for the purposes of section 87B of the Act that it will:
- (a) by 30 June 2017, complete a review of the complaints since 1 January 2015 it has identified in the course of the ACCC's investigation relating to automatic renewal or cancellation processes in order to identify Bundled Print and Online Package customers who:
 - (i) may not have been adequately informed about Sensis' automatic renewal terms and cancellation processes; and
 - (ii) have not already been offered and/or received a refund or credit in relation to a complaint about automatic renewal and cancellation processes;
 - (b) make reasonable attempts to contact customers identified as a result of the review in paragraph (a) above for the purpose of offering refunds or credits to those customers; and
 - (c) refund or credit those customers that it has successfully contacted and who have accepted Sensis' offer of a refund or credit, within 28 days of acceptance.

Corrective Notice

- 17 Sensis undertakes for the purposes of section 87B of the Act that that it will, within 21 days of the date of this undertaking, publish on Sensis' home page www.sensis.com.au for a period not less than 45 consecutive days.
- 17.1 a prominent clickable tile link (**Sensis Banner Link**) displayed on the home page of the Sensis website in the form and terms of Annexure A to this undertaking and to the following specifications:
- (a) the words 'CORRECTIVE NOTICE' are to be in bold uppercase black sans serif font on a white background, followed by the words 'Important information for Targeted Solutions and White Pages Network Package Customers' in bold lowercase black sans serif font on a white background, in a black bordered box;
 - (b) the words 'Find out More' are to be in black, sans serif font on a white background and contained within the same boxed area as the words 'CORRECTIVE NOTICE – Important information for Targeted Solutions and White Pages Network Package Customers';
 - (c) (subject to (e) below), the font size for the text specified in (a) and (b) above is to be no smaller than 13.5pt or such other size used by Sensis in its main banner tiles on Sensis' website;

- (d) (subject to (e) below), the bordered box is to be at least as wide as the main banner box used by Sensis on its website and its contents, including its white space, is to operate in the form of a one-click hyperlink to the website notice described in paragraph 17.2 below;
 - (e) the specifications at (c) and (d) above may be varied by Sensis when the home page www.sensis.com.au is viewed on mobile or other non-desktop environments provided always that the Sensis Banner Link achieves the same relative prominence to Sensis' main banner tiles as it does on the desktop version of the page.
- 17.2 a website notice (**Sensis Website Notice**) in the form and terms of Annexure B to this undertaking and to the following specifications:
- (a) the Sensis Website Notice is viewable by clicking on the Sensis Banner Link;
 - (b) 100 per cent of the area of the Sensis Banner Link forms a clickable link to the Sensis Website Notice;
 - (c) the heading of the Sensis Website Notice is to be in font that is no less than 12 point bold black sans serif font on white background;
 - (d) the body of text of the Sensis Website Notice is to be in font that is no less than 12 point size black sans serif font on white background;
 - (e) the border of the Sensis Website Notice will be black;
 - (f) the Sensis Website Notice will be displayed on a stand-alone webpage that is coded in standard 'HTML' format;
 - (g) the Sensis Website Notice will not be displayed as a 'pop-up' or 'pop-under' window;
 - (h) neither the Sensis Website Notice nor the Sensis Banner Link shall have in place any mechanism which would preclude search engines from
 - (i) Indexing the page; or
 - (ii) Scanning the page for links to follow.

Monitoring of internal compliance

- 18 Sensis undertakes for the purposes of section 87B of the Act that it will:
- (a) maintain the changes Sensis has made to its systems and processes and which are described at paragraph 6 above for a period of at least 3 years, subject to further improvements that Sensis reasonably considers to be necessary or appropriate;
 - (b) appoint an internal Sensis compliance officer who will be responsible for the following in relation to all Sensis representatives responsible for dealing with customers in respect of sales, product cancellations or complaints (**Sensis Customer Representatives**):
 - (i) ensuring all Sensis Customer Representatives receive annual training on Sensis' contracting processes;
 - (ii) ensuring all Sensis Customer Representatives receive training every two years on Sensis' obligations under the ACL; and
 - (iii) monitoring Sensis Customer Representatives' compliance with Sensis' contracting processes and reporting on a quarterly basis to Sensis Chief Financial Officer regarding any compliance issues that are identified.
 - (c) appoint a suitably qualified independent external reviewer to:

- (i) conduct a review and deliver a report to Sensis' Chief Financial Officer within 12 months of the date of this undertaking as to whether Sensis has satisfactorily completed each step outlined in paragraphs 16 and 17 above;
- (ii) conduct an annual review and deliver an annual report to Sensis' Chief Financial Officer for a period of 3 years of the date of this undertaking as to:
 - (A) whether Sensis has maintained the changes Sensis made to its systems and processes and which are described at paragraphs 7 and 18(b) above, subject to further improvements that Sensis reasonably considered to be necessary or appropriate; and
 - (B) any deficiencies in Sensis' compliance with this undertaking; and
- (iii) provide to the ACCC a copy of:
 - (A) the report described at paragraph 18(c)(i) above; and
 - (B) the annual report described at paragraph 18(c)(ii) above if that report identifies any deficiencies in Sensis' compliance with this Undertaking and a summary of the steps Sensis has taken or will take to remedy those deficiencies;

within one month of the report being completed and received by Sensis.

19 Sensis acknowledges that:

- (a) the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to the undertaking including in news statements and in ACCC publications; and
- (c) this undertaking in no way derogates from the rights and remedies available to any other person arising from matters the subject of the ACCC's concerns.

Executed as an Undertaking

Executed by Sensis Pty Ltd (ACN 007 423 912) pursuant to section 127(1) of the *Corporations Act 2001* by:



Signature of director

John Allan

Name of director (print)

8

May 2017

Date



Signature of a director/~~company secretary (delete as appropriate, or entire column if sole director company)~~

Joanna Hands

Name of director (print)

8

May 2017

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

and signed on behalf of the Commission:



Acting Chairman

11/05/2017

Date

**CORRECTIVE NOTICE - Important information for
Targeted Solutions and White Pages Network Package
Customers**

[Click to Find Out More](#)

Annexure B - Sensis Website Notice



Sensis has provided a court-enforceable undertaking following an ACCC investigation into the operation of its automatic renewal terms and cancellation processes.

The ACCC has been investigating allegations that, since at least 1 January 2015 to August 2016, Sensis did not adequately disclose the automatic renewing nature of Sensis' contracts and Sensis' cancellation processes to customers purchasing Targeted Solutions and White Pages Network Packages. Sensis' automatic renewal terms and cancellation policies were not adequately disclosed on Sensis' website, and may not have been adequately disclosed in certain communications with Targeted Solutions and White Pages Network Package customers during and after the contracting process.

Sensis acknowledges that this conduct may have contravened sections 18 and 29(1)(i) of the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

To address the ACCC's concerns that Sensis may have misled customers, Sensis has given the ACCC a court-enforceable undertaking (available at www.accc.gov.au). The undertaking requires Sensis to publish a corrective notice, complete a review of its complaint records since 1 January 2015 to identify customers who are entitled to receive a refund or credit, and review and improve its contracting processes.

If you believe that you have been affected by the conduct outlined above please contact Sensis by telephone on 1800 359 321.



Australian
Competition &
Consumer
Commission