

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87BBY
SIGNAL TELECOMMUNICATIONS PTY LTD
ACN. 078.413.199

BACKGROUND

- (1) Signal Telecommunications Pty Ltd, ACN 078 413 199, ('Signal') is a wholesaler and reseller of telecommunication products and services of Vodafone Australasia Pty Ltd's network, 'Network Vodafone'. Based in Victoria, Signal operates as a service provider in Victoria, New South Wales, South Australia, Western Australia and Queensland.
- (2) From March 1998 to August 1998, Signal, through Digital Discount Centre Pty Ltd, ACN 076 225 825, ("DDC") promoted a mobile phone package, referred to as the "Phone Saver Plan 25". This was promoted by way of a brochure entitled "Phone Saver" which was distributed at over 50 petrol station sites across Victoria.

In addition to not stating the full cash price of the package despite making representations as to parts of the total price, the brochure contained the following representations:

- (i) "FREE Access to Voice Mail"; and
 - (ii) "Australia Wide Flat Rate ... Call rates are 40 cents per 30 seconds with 15 cent flagfall".
- (3) Following an investigation by the Australian Competition and Consumer Commission ("the Commission"), the Commission reached the view that Signal had contravened the Trade Practices Act 1974 ('the Act') in that Signal made false or misleading representations in the 'PHONE SAVER' brochure in contravention of sections 52 and 53(e) of the Act, and failed to state the cash price in contravention of section 53C of the Act. The Commission considers Signal contravened sections 52, 53(e) and 53C of the Act by:
 - (a) using the phrase "FREE access to Voice Mail" in the promotional brochure, thereby representing that no charges would be incurred in accessing voice mail, which would include the retrieval of messages. As such, the full cost of using voice mail was not advised, as the cost of retrieval was not indicated. Consumers were therefore unable to make an informed decision as to the true costs involved and may have been misled; and

- (b) using the phrase "Australia wide flat rate" falsely representing that one rate applies to all calls. This representation was further reinforced in the brochure by the fine print which read "Call rates are 40 cents per 30 seconds with 15 cents flagfall", which appeared to detail and confirm the represented "flat-rate". In failing to mention the applicability of peak and off peak rates as well as minimum call costs, the brochure represented that the one rate applies to all calls, when in fact calls of less than 30 seconds incur a higher charge during off-peak periods than peak periods; and
- (c) failing to state the full cash price of the package, whilst making a representation as to a part of the total price. The full cost of the transaction was not advised.
- (4) In early September 1998, the Commission brought to Signal's attention its view that the representations referred to in paragraph (3) above contravened sections 52, 53(e) and 53C of the Act. The Commission and Signal subsequently corresponded and met several times to discuss the Commission's view.
- (5) Signal admits that its conduct contravened the Act and has now ceased the conduct referred to in paragraph (3).'

UNDERTAKINGS

- (6) Signal hereby undertakes for the purposes of section 87B of the Act to:
- (a) send a letter of apology to all customers who subscribed to 'Phone Saver Plan 25', stating that:
- (i) Signal apologises for certain representations made in the Phone Saver promotional brochure which may have misled Consumers, namely:
- in stating: "FREE access to Voice mail", consumers may have been misled to believe that no charges would be incurred in *accessing* voice mail, because no retrieval costs were indicated;
 - in stating: "Australia Wide Flat Rate ... Call rates are 40 cents per 30 seconds with 15 cent flagfall", consumers may have been misled to believe that one rate applies to all calls, namely that all calls will incur a rate of 40 cents per 30 seconds with 15 cents flagfall, when in fact peak and off peak rates as well as minimum call costs applied.
- (ii) Signal apologises for not stating the full cash price of the package, whilst making a representation as to a part of the total price;
- (iii) Signal is writing this letter pursuant to action by the Australian Competition and Consumer Commission;

- (b) In the letter referred to in paragraph (6)(a), Signal will:
- (i) inform all terminated customers as at the time of this undertaking, that Signal will be taking no action to recover early termination payments due from customers who have chosen early termination prior to the time of this undertaking;
 - (ii) inform all active customers as at the time of this undertaking, that they are to receive a credit of \$50.00 towards the payment of their account; the credit to be actioned in the next billing cycle;
 - (ii) inform all active customers as at the time of this undertaking, that Signal will allow them to exit the contract during the remaining term of the contract at no penalty. This will include Signal foregoing recovery of the handset;
- (c) within 3 months of the signing of this undertaking, provide the Commission with a written report, to be prepared by a firm of solicitors, containing complete details of evidence of this action;

COMPLIANCE PROGRAM

- (d) within 3 months of the signing of this undertaking, develop for consideration by the Commission, a Trade Practices Compliance program with the following characteristics and attributes, having regard to the Australian Standard ® for Compliance Programs AS 3806 - 1998:

(A) Aim

To create a culture of compliance within Signal and to prevent, so far as is reasonably possible, any contraventions of Division 1 of Part V of the Act by Signal or by its directors, employees or agents.

(B) Policy

The formal adoption, or reaffirmation, by Signal, of a policy of strict compliance with both the letter and spirit of Division 1 of Part V of the Act within Signal, and the adoption, or reaffirmation, and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(C) Compliance infrastructure

The appointment of an appropriately qualified senior executive as the Compliance Officer with overall responsibility for Trade Practices compliance.

(CA) Management responsibility

Ensuring that the senior executive referred to in clause (C) has:

- authority, recognition and support within the organisation;
- access to all levels in the organisation to ensure compliance; and
- ready access to the Board when required.

(D) Coverage

The compliance program to cover all directors, employees and agents of Signal whose duties could result in them being concerned in conduct that might breach Division 1 of Part V of the Act ("relevant staff").

(E) Education

In conjunction with solicitors having expertise in Trade Practices law, development and implementation of an education program calculated to have the relevant staff conversant with Division 1 of Part V of the Act to a level where:

- (i) staff can avoid obvious contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in the Signal compliance infrastructure;
- (ii) persons with responsibilities within the Signal compliance infrastructure can effectively carry out those responsibilities; and
- (iii) the Signal Compliance Officer can address more complex Trade Practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues which require referral to its solicitors.

(EA) Complaints Handling System

Implementation of a visible and accessible complaints handling system which complies with Australian Standard ® for Complaints Handling AS 4269 - 1995:

(F) Approval of Program

Signal will ensure that prior to implementation of the program, a firm of solicitors with expertise in Trade Practices law provides written

confirmation to Signal, that the Program possesses all the characteristics and attributes set out herein.

(G) Amendments to the Program

Signal will incorporate into the Program and implement as part of the program all reasonable changes that are recommended to it by the firm of solicitors.

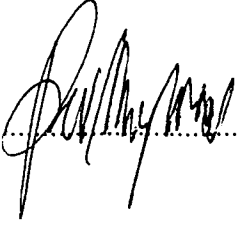
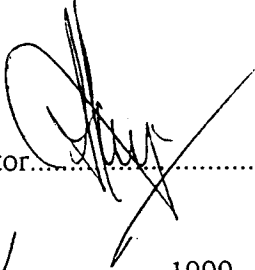
(H) Implementation

The Trade Practices Compliance Program referred to in paragraph 6(d) above is to be implemented by Signal within 3 months of approval having been given by the Commission as to its form and content, and is to remain in force for a minimum period of 2 years from the signing of this undertaking;

ACKNOWLEDGMENTS


- (7) Signal acknowledges that the Commission will make the undertaking available for public inspection.
- (8) Signal further acknowledges that the Commission may from time to time publicly refer to this undertaking.
- (9) Signal further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (10) Signal further acknowledges that the report referred to in paragraph (6)(F) above will be held with this undertaking on the public register.

IN WITNESS of these undertakings
and its agreement the common seal of
SIGNAL TELECOMMUNICATIONS PTY LTD (ACN 078 413 199)
was hereunto affixed by authority of the
Board of Directors in the presence of:

Secretary/Director.....  Director..... 

This 30th day of April 1999

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974



.....
(Professor Allan Fels)
Chairperson

This

12

day of

may

1999