



TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B**

**BY
VODAFONE NETWORK PTY LIMITED
ACN. 081 918 461**

1. PERSONS GIVING UNDERTAKINGS

- 1.1 This Undertaking is given to the Australian Competition & Consumer Commission (**the Commission**) by Vodafone Network Pty Limited (ACN 081 918 461) of Level 11, Tower B Citadel Towers, 799 Pacific Highway, Chatswood, New South Wales (**Vodafone**) under section 87B of the *Trade Practices Act 1974* (Cth) (**the Act**).

2. BACKGROUND

- 2.1 Vodafone operates a GSM mobile network in Australia supplying post-paid and pre-paid mobile telephone carriage services. Vodafone's operations also include the sale of handsets, network airtime and value added services such as voicemail.
- 2.2 Vodafone supplied prepaid mobile telecommunications services under the brand name FastFone. Vodafone now supplies the services and products which were known as FastFone under the name Vodafone Pre-pay. In this Undertaking, references to FastFone includes the services and products sold under the name Vodafone Pre-pay.
- 2.3 Using the FastFone service, a customer can make telephone calls on a mobile telephone using purchased call credits. Those call credits entitle the customer to make calls on the Vodafone mobile digital telecommunications network to a specified value within a specified expiry period (**FastFone call credits**).
- 2.4 To make calls using FastFone call credits, the customer must first obtain a SIM card from Vodafone (**a FastFone Pack**) which assigns a telephone number to the customer. It is necessary to contact Vodafone after purchasing a FastFone Pack to register and activate

the FastFone call credits to make them available for use in the form of an account balance. Customers may purchase a handset bundled with FastFone call credits to a specified value or use their own handset to use the FastFone call credits to make calls.

2.5 Activating FastFone call credits entitles customers to an access period during which the customer could make outgoing calls and receive incoming calls on the telephone number supplied by Vodafone and make emergency services calls. Once the customer's FastFone call credits are used up or expire, the customer can continue to receive incoming calls or make emergency services calls until their access period expires, unless further FastFone call credits are added to the customer's FastFone call credit account. If further FastFone call credits are not activated and the access period expires, the customer's account is cancelled after a grace period.

2.6 Vodafone offered customers the following ways to purchase FastFone call credits:

- (i) through retail stores: a FastFone Pack (either a Mobile Pack, including a handset, or a Connection Pack, without a handset) containing a SIM card and an entitlement to FastFone call credits;
- (ii) through retail stores and vending machines: recharge cards entitling the customer to a specified monetary value of FastFone call credits;
- (iii) through automatic teller machines: through vouchers entitling the customer to a specified monetary value of FastFone call credits; and
- (iv) by telephone call to Vodafone: recharging of customer accounts with a specified monetary value of FastFone call credits from the customer's credit card.

Retail stores offering FastFone call credits included mobile telephone stores, convenience stores, services stations, department stores, supermarkets, video stores and newsagencies. Each of the methods listed in paragraph (i) to (iv) required customers to first purchase and then activate, by calling Vodafone, those FastFone call credits before use.

2.7 Prior to September 2001, Vodafone offered FastFone call credits to customers subject to a 365 day expiry period, starting from the date the customer activated the FastFone call credits.

2.8 As of 3 September 2001, Vodafone offered FastFone call credits to customers subject to an expiry period based on the value of the monetary recharge amount applied (**the Variation**). The applicable recharge values and call credit expiry periods were: \$20 - 40 days, \$30 - 60 days, \$50 -100 days, and \$100 - 200 days.

2.9 Vodafone took the following steps to inform its existing FastFone call credit customer base of the Variation:

- between 16 August 2001 and 31 August 2001, Vodafone sent an SMS message to the mobile telephone number of FastFone customers (**the Variation SMS**);
- Vodafone placed a notice in the Australian newspaper;
- from 3 September 2001, when customers rang Vodafone to activate the FastFone call credits they had purchased, they received, after activation, a voice message stating the new expiry date for call credits; and
- supplied new advertising material to retail stores and requested that old material be removed.

2.10 In September 2001, the Commission became aware of complaints by existing customers of Vodafone that they had not received notice of the Variation. The Commission also became aware of complaints from customers, who purchased FastFone call credits in the ways identified in paragraphs 2.6(i) and 2.6(ii) above, and claimed they relied on advertising and packaging material continuing to promote the 365 day expiry period in retail stores.

2.11 Following an investigation by the Commission, it considers that:

- (i) retail stores selling Vodafone FastFone services incorrectly continued to display advertising material stating that the FastFone call credit expiry period was 365 days thereby falsely representing that the service was of a particular standard, quality, value or grade;
- (ii) retail stores selling Vodafone FastFone services incorrectly continued to display advertising material stating that the FastFone call credit expiry period was 365 days which was misleading or deceptive or likely to mislead or deceive; and
- (iii) where existing customers did not receive notice of the Variation they were likely to have been misled as to the length of the expiry period on the first occasion they purchased FastFone call credits after the Variation.

The Commission considers that this conduct is in contravention of sections 52 and 53(aa) of the Act.

- 2.12 The Commission first raised some concerns with Vodafone regarding the implementation of the Variation in November 2001.
- 2.13 Vodafone has provided refunds to FastFone customers who contacted Vodafone and claimed that they relied on incorrect in-store materials. For other customers that complained about the implementation of the Variation, Vodafone assessed these complaints on a case by case basis and in some circumstances provided a refund to these customers.
- 2.14 On 24 June 2002, Vodafone implemented a commercial decision, in line with its revised customer focused strategies, to offer to customers FastFone call credits subject to an expiry period of 365 days. All activations of FastFone call credits from this date were subject to this change.
- 2.15 Vodafone acknowledges that in contacting its existing customers about the Variation, some customers would not have received the Variation SMS which it sent, due to limitations in the period SMS messages were held by the system if customers turned their handsets off for an extended period or if the customer had a full inbox in their handset.
- 2.16 Vodafone acknowledges that outdated advertising material promoting the 365 day expiry period remained in some retail stores after 3 September 2001. This was not intended by Vodafone and it took steps to remove this material before it implemented the Variation. Vodafone acknowledges that despite these steps, some material remained in retail stores after 3 September 2001.
- 2.17 Vodafone acknowledges that the false representations identified in 2.11(i) would likely amount to a breach of section 53(aa) of the Act.
- 2.18 Vodafone acknowledges that the misleading or deceptive conduct identified in paragraph 2.11(ii) would likely amount to a breach of section 52 of the Act.
- 2.19 Vodafone acknowledges that the misleading or deceptive conduct identified in paragraph 2.11(iii) would likely amount to a breach of section 52 of the Act.
- 2.20 Vodafone's records indicate that FastFone customers potentially affected by the conduct fall within three groups:
- active customers;
 - inactive customers who can be made active customers; and

- inactive customers who cannot be made active customers in Vodafone's systems.

3. UNDERTAKINGS

- 3.1 This Undertaking takes effect on the date on which the Commission accepts the Undertaking by signing it.
- 3.2 Vodafone hereby undertakes for the purposes of section 87B of the Act:
- (a) that it, or any of its subsidiaries, shall not, in trade or commerce, in connexion with the promotion of its Vodafone FastFone mobile services, misrepresent the length of the expiry period of call credits in contravention of sections 52 or 53(aa) of the Act;
 - (b) that it will, within 60 days of this Undertaking taking effect, where the customer is either an active customer or an inactive customer who can be made active, re-credit the customer's FastFone call credit account the number of FastFone call credits that expired from that customer's first activation of FastFone call credits between 3 September 2001 and 24 June 2002;
 - (c) that it will, within 60 days of this Undertaking taking effect, send an SMS message in the form of **Attachment A**, to FastFone customers entitled to re-crediting of FastFone call credits under paragraph (b) (**the Notification SMS**);
 - (d) that it will, within 7 days of paragraph (c) occurring, send a letter to the contact address held by Vodafone, in the form of **Attachment B**, to FastFone customers entitled to re-crediting of FastFone call credits under paragraph (b) that Vodafone's records indicate did not receive the Notification SMS message;
 - (e) that it will, within 60 days of this undertaking taking effect, for a period of three months after the advertisement referred to in paragraph (f), where the customer is an inactive customer which Vodafone cannot make active offer the Vodafone prepaid services pack if contacted by the customer (**the New Pack**), within 14 days of the customer contacting Vodafone. The New Pack will contain a new SIM card and entitle the customer to which ever is higher of \$20 of call credits or call credits to the value of FastFone call credits which expired from that customer's first activation of FastFone call credits between 3 September 2001 and 24 June 2002;
 - (f) that it will, within 60 days of this Undertaking taking effect, run an advertisement in *Australian* newspaper in the form of **Attachment C**;

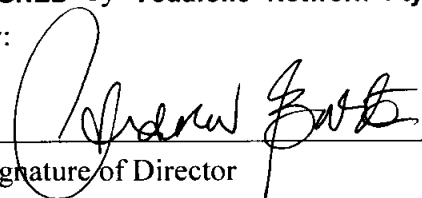
- (g) that it will, within 3 months of the signing of this Undertaking, conduct a review of its Trade Practices Compliance program and internal policies as they apply to FastFone. Amongst other things, the review will examine the removal of existing promotional material from retail stores when the continuing display of that material could be misleading or deceptive or likely to mislead or deceive, as a result of a variation in the terms or conditions of supply of FastFone call credits. Any inadequacies identified by Vodafone should be addressed by implementing a plan to overcome those deficiencies within 14 days of the review being finalised. Vodafone will supply the Commission with a report, no later than 5 months from the signing of this undertaking, in relation to this review and in any event within 14 days of the completion of this review;
- (h) that it will maintain its Trade Practices Compliance program in relation to the FastFone business, as amended by any changes identified by the review in paragraph (g); and
- (i) that it will, for a period of 12 months commencing on the date of this Undertaking, have the promotional material produced by Vodafone for FastFone, in the form of advertisements and advertising materials, reviewed by its internal legal department for compliance with sections 52 and 53(aa) of the Act, and shall keep record of these reviews.

4. **ACKNOWLEDGMENTS**

- 4.1 Vodafone acknowledges that the Commission will make the Undertaking available for public inspection.
- 4.2 Vodafone acknowledges that the Commission will from time to time publicly refer to this Undertaking.
- 4.3 Vodafone acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

SIGNED by Vodafone Network Pty Limited

by:

x 

Signature of Director

ANDREW BARTON

Name of Director (print)



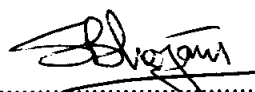
Signature of Director/Secretary

DAVID WHITE

Name of Director/Secretary (print)

This 13 day of September 2002

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


.....
(~~Professor Allan Fels~~) SURESH BHOJANI
Acting Chairperson

This 25th day of September, 2002

ATTACHMENT A

Vodafone has re-credited your FastFone account with certain expired credits following discussions with the ACCC. For info: www.vodafone.com.au/fastfone

ATTACHMENT B

HEADLINE

[Vodafone letterhead]

Dear [customer]

We've fixed up your FastFone call credits

We stuffed up. The contract changes to your FastFone plan may not have been explained as clearly as possible, so we're fixing it. And that means that certain expired call credits will be automatically re-credited to your account. You don't have to do anything to receive the re-credit.

What did we do wrong?

Well, what we did was alter the call credit expiry period for FastFone call credits in September 2001, from 365 days, to a period dependant on the value of call credits purchased (for example a month).

Now maybe we didn't communicate the changes very well

We tried a lot of things to contact you. We sent you a TXT message (an SMS Message), placed notices in the *Australian* and voice messages were played when you activated your FastFone call credits, noting this change to your terms and conditions. However, despite our efforts you may not have known about the change because you may not have received the TXT message sent by Vodafone informing you of this change; or you may have continued to see material in some retail stores which stated the expiry period was 365 days.

The Australian Competition and Consumer Commission (**ACCC**) has raised concerns that not all customers were aware of the changed call credit expiry period. In particular, the ACCC has alleged that the failure of some retail stores to remove outdated promotional materials and the failure of some customers to receive the TXT sent by Vodafone may amount to misleading or deceptive conduct in breach of the

Trade Practices Act. Following discussions with the ACCC, Vodafone has offered to re-credit your FastFone call credit account with the call credits that expired from your first activation of FastFone call credits between 3 September 2001 and 24 June 2002.

So, we've fixed it

In addition to providing you the re-credit described above, we have reverted to offering you, as a FastFone customer, a call credit expiry period of 365 days for all activations of FastFone call credits since 24 June 2002.

If you would like further information please contact Vodafone FastFone on 1300 555 007 or see www.vodafone.com.au/fastfone

ATTACHMENT C

The diagram shows a rectangular advertisement layout. At the top left is a box labeled "Insert ACCC Logo". At the top right is a box labeled "Insert Vodafone Logo". In the center is the heading "CORRECTIVE ADVERTISEMENT". Below this is a paragraph of text. Further down is the heading "OFFER", followed by another paragraph of text. At the bottom is a final paragraph of text. To the right of the advertisement box, a vertical double-headed arrow indicates a height of "10 cm". Below the advertisement box, a horizontal double-headed arrow indicates a width of "7 cm".

Insert ACCC
Logo

Insert Vodafone
Logo

CORRECTIVE ADVERTISEMENT

During the period between 3 September 2001 and 24 June 2002, Vodafone supplied FastFone pre-paid mobile phone services to customers who may have been under the incorrect impression that they had 365 days in which to use the credit they purchased. In fact, customers had between 60 – 200 days to use the credit they had purchased.

OFFER

If you re-charged your FastFone service between 3 September 2001 and 24 June 2002 and you are no longer a FastFone customer you may be entitled to some call credits.

Please call [*insert toll free number*] and Vodafone will determine whether you are entitled to this credit.

Vodafone apologises for any inconvenience its oversight may have caused you.

10 cm

7 cm