

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth)

by

Dodo Services Pty Ltd

ACN 158 289 331

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (the **ACCC**) by Dodo Services Pty Ltd (**Dodo**) ACN 158 289 331 of Level 10, 452 Flinders Street, Melbourne 3000 in the State of Victoria for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

The parties

2. Dodo is a supplier of retail fixed-line broadband plans to consumers supplied over the National Broadband Network (**NBN**), in addition to other services.
3. The ACCC is the independent statutory authority which is responsible, inter alia, for the enforcement of the Australian Consumer Law (**ACL**) contained in Schedule 2 to the CCA.

Conduct of concern

4. Between approximately 1 November 2015 and 26 March 2018, Dodo made the following statement:

"Perfect for streaming"

in advertising Dodo's retail broadband services provided using the NBN, including broadband plans that used the NBN 12 megabits (**Mbps**) download and 1 Mbps upload wholesale access speed tier (**12/1 Plan**) and broadband plans with included data limited to 10 gigabytes (**GB**) (**Perfect for Streaming Statement**).
5. The Perfect for Streaming Statement, in connection with the promotion of Dodo's NBN broadband services, was made on Dodo's website and in a number of printed pamphlets and posters in selected Dodo Kiosk retail stores.
6. The ACCC considers that by making the Perfect for Streaming Statement in the above circumstances, Dodo represented that:
 - 6.1 All of Dodo's retail broadband services that use the NBN, including all of Dodo's 12/1 Plans and Dodo's 12/1 Plan that had included monthly data limited to 10GB, were perfect for streaming a reasonable quantity of video content at all available picture quality settings including streaming high definition (**HD**) and ultra-high definition (**UHD**) video on large screen devices (**Perfect for Streaming Representation**), when that was not the case.
7. The ACCC considers that the Perfect for Streaming Representation is false and misleading because:
 - 7.1 Dodo customers with a monthly data allowance of 10GB would use up that data allowance after a modest amount of streaming such that those plans are not perfect for streaming;

- 7.2 While HD streaming is possible on a 12/1 Plan, customers will be limited to watching one HD video stream at a time consistently at its highest quality, and will be limited in using the internet service for other purposes while streaming HD content at its highest quality; and
 - 7.3 Some video content, for example UHD video and 4K video, cannot be streamed on a 12/1 Plan.
8. Around 16,000 Dodo customers who entered into an agreement with Dodo for a 12/1 Plan with included data limited to 10GB during the period that the Perfect for Streaming Representation was made, incurred excess data charges for internet usage above 10GB (**Excess Data Charges**). The total amount of the Excess Data Charges was around \$360,000.

Contraventions of the CCA

9. The ACCC considers that by reason of the matters described in paragraphs 4 to 7 above, Dodo has:
- 9.1 in trade or commerce, engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of section 18 of the ACL;
 - 9.2 in connection with the supply or possible supply of services, or in connection with the promotion for the supply of services, made false or misleading representations that services are of a particular standard or quality in contravention of section 29(1)(b) of the ACL;
 - 9.3 in connection with the supply or possible supply of services, or in connection with the promotion for the supply of services, made false or misleading representations that services have performance characteristics in contravention of section 29(1)(g) of the ACL; and
 - 9.4 in trade or commerce, engaged in conduct that was liable to mislead the public as to the nature, the characteristics or the suitability for their purpose of services in contravention of section 34 of the ACL.

Admissions

10. Dodo admits that its conduct outlined in paragraphs 4 to 7 above is likely to have contravened sections 18, 29(1)(b), 29(1)(g) and 34 of the ACL.

Commencement of this Undertaking

11. This Undertaking comes into effect when:
- 11.1 this Undertaking is executed by Dodo; and
 - 11.2 this Undertaking so executed is accepted by the ACCC.
12. Upon the commencement of this Undertaking, Dodo undertakes to assume the obligations set out in paragraphs 13 to 17 below for the purposes of section 87B of the CCA.

Undertakings

Correspondence

13. Dodo undertakes, for the purposes of section 87B of the CCA that it will, within 60 days of the commencement of this Undertaking:
- 13.1 send to all current Dodo broadband customers who entered into a contract with Dodo for a 12/1 Plan with included data limited to 10GB during the period 1 November 2015 and 26 March 2018 and were charged Excess Data Charges (**Current Excess Data Customers**) an email in the form of Annexure A;
 - 13.2 if Dodo receives notification that an email sent in accordance with paragraph 13.1 was not successfully delivered to any Current Excess Data Customers send a short message

service (**SMS**) to those Current Excess Data Customers containing a link to a webpage substantially in the form of Annexure B;

- 13.3 send to all customers who entered into a contract with Dodo for a 12/1 Plan with included data limited to 10GB during the period 1 November 2015 and 26 March 2018 and were charged Excess Data Charges but are no longer Dodo broadband customers (**Past Excess Data Customers**) an email in the form of Annexure C; and
- 13.4 if Dodo receives notification that an email sent in accordance with paragraph 13.3 was not successfully delivered to any Past Excess Data Customers:
 - 13.4.1 send an SMS to those Past Excess Data Customers containing a link to a webpage substantially in the form of Annexure D; or
 - 13.4.2 make an outbound telephone call commencing with, as far as reasonably practicable, the script in Annexure E,to those Past Excess Data Customers.

Refunds

14. Dodo undertakes for the purposes of section 87B of the CCA that it will:
 - 14.1 within 60 days of the commencement of this Undertaking, by way of applying a credit to the customer's account, refund to all Current Excess Data Customers any Excess Data Charges that were imposed on those customers in respect of any period:
 - 14.1.1 between 1 November 2015 and 26 March 2018; and
 - 14.1.2 during which the relevant customer was on a 12/1 Plan with included data limited to 10GB; and
 - 14.2 within 14 days of being contacted by any Past Excess Data Customer in accordance with Annexures C or D, by way of electronic funds transfer (EFT) refund to the Past Excess Data Customer, all Excess Data Charges that were imposed on those customers in respect of any period:
 - 14.2.1 between 1 November 2015 and 26 March 2018; and
 - 14.2.2 during which the relevant customer was on a 12/1 Plan with included data limited to 10GB,less any amounts owing by the Past Excess Data Customer to Dodo.

Cancellations

15. Dodo undertakes for the purposes of section 87B of the CCA that it will, within 14 days of receiving a request in accordance with Annexures A or B from any Current Excess Data Customer to cancel a broadband contract with Dodo that applied at the date of this Undertaking, to cancel that contract.

Reporting

16. Dodo undertakes for the purposes of section 87B of the CCA that it will, within 70 days of the commencement of this Undertaking, provide a report to the ACCC setting out:
 - 16.1 the number of Current Excess Data Customers and Past Excess Data Customers; and
 - 16.2 the number of Current Excess Data Customers and Past Excess Data Customers respectively to which it has undertaken the correspondence referred to in the 'Correspondence' section above.
17. Dodo undertakes for the purposes of section 87B of the CCA that it will, within 90 days of the commencement of this Undertaking, provide a report to the ACCC setting out:
 - 17.1 as at the date that is 74 days after the commencement of this Undertaking, the number of Current Excess Data Customers and Past Excess Data Customers who were provided a refund in accordance with paragraph 14 and the aggregate amount of the refunds paid to those customers; and

17.2 if any of those customers were not provided with a refund for the Excess Data Charges as at the date that is 74 days after the commencement of this Undertaking, the reason for this.

Acknowledgments

18. Dodo acknowledges that:

- 18.1 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;
- 18.2 the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- 18.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

Dodo Services Pty Ltd ACN 158 289 331 pursuant to section 127(1) of the *Corporations Act 2001*.



.....
Secretary/Director

.....
ASHE-LEE TEGATHESAN

.....
Print name



.....
Director

.....
MARK WRATTEN

.....
Print name

This 8th day of July 2019

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010*



.....
Rodney Graham Sims

.....
Chair

This 9th day of July 2019

ANNEXURE A

EMAIL TO CUSTOMERS

Dear [insert salutation]

Refund and offer to exit your broadband contract with no cost because of misleading use of 'perfect for streaming'

Following an investigation by the Australian Competition and Consumer Commission (ACCC), Dodo have given you a refund because we charged you excess data charges for internet usage of your broadband service that you entered into with us when we were describing that plan as 'perfect for streaming'. The refund has been credited to your account.

We are also offering you the option to exit your broadband contract with us. We acknowledge that the service you signed up for was not 'perfect for steaming' all types and quality of content. If you choose to take up this offer, there will be no additional costs to you, including no early termination fees.

This refund and offer is part of a court enforceable undertaking that Dodo has provided to the ACCC in respect of its use of 'perfect for streaming' when promoting its retail broadband services that use the NBN and have a maximum download speed of 12Mbps with included data limited to 10GB.

To take up this offer, or if you have any questions regarding this email, simply contact our dedicated customer service representatives on [TBC].

If you have any questions regarding your Dodo broadband service or would like to discuss alternative plan options, please contact our Customer Service on 13 dodo (13 36 36)

Yours sincerely

[Director or manager of Dodo Services Pty Limited]

ANNEXURE B

SMS TO CUSTOMERS

Following an investigation by the ACCC, Dodo have credited your account with a refund of excess data charges for your broadband service which had been described as 'perfect for streaming'.

We are also offering you the option to exit your broadband contract with us with no early termination fees.

For more information, including how to take up this offer click here [insert webpage address].

WEBPAGE

Following an investigation by the Australian Competition and Consumer Commission (ACCC), Dodo have given you a refund because we charged you excess data charges for internet usage of your broadband service that you entered into with us when we were describing that plan as 'perfect for streaming'. The refund has been credited to your account.

We are also offering you the option to exit your broadband contract with us. We acknowledge that the service you signed up for was not 'perfect for steaming' all types and quality of content. If you choose to take up this offer, there will be no additional costs to you, including no early termination fees.

This refund and offer is part of a court enforceable undertaking that Dodo has provided to the ACCC in respect of its use of 'perfect for streaming' when promoting its retail broadband services that use the NBN and have a maximum download speed of 12Mbps with included data limited to 10GB.

To take up this offer, or if you have any questions regarding this email, simply contact our dedicated customer service representatives on [TBC].

If you have any questions regarding your Dodo broadband service or would like to discuss alternative plan options, please contact our Customer Service on 13 dodo (13 36 36)

ANNEXURE C

EMAIL TO CUSTOMERS

Dear [insert salutation]

Refund because of misleading use of 'perfect for streaming'

Following an investigation by the Australian Competition and Consumer Commission (ACCC), Dodo have undertaken to give you a refund because we charged you excess data charges for internet usage of your broadband service that you entered into with us when we were describing that plan as 'perfect for streaming'. The refund will be set off against any outstanding amounts that you may owe Dodo,

This refund is part of a court enforceable undertaking that Dodo has provided to the ACCC in respect of its use of 'perfect for streaming' when promoting its retail broadband services that use the NBN and have a maximum download speed of 12Mbps with included data limited to 10 GB.

The refund will be paid by electronic funds transfer to your nominated account.

To take up this refund offer, or if you have any questions regarding this email, simply contact our dedicated customer service representatives on [TBC].

Yours sincerely

[Director or manager of Dodo Services Pty Limited]

ANNEXURE D

SMS TO CUSTOMERS

Following an investigation by the ACCC, Dodo have undertaken to provide a refund of excess data charges for your former broadband service which had been described as 'perfect for streaming'.

For more information, including how to take up this offer click here [insert webpage address].

WEBPAGE

Following an investigation by the Australian Competition and Consumer Commission (**ACCC**), Dodo have undertaken to give you a refund because we charged you excess data charges for internet usage of your broadband service that you entered into with us when we were describing that plan as 'perfect for streaming'. The refund will be set off against any outstanding amounts that you may owe Dodo,

This refund is part of a court enforceable undertaking that Dodo has provided to the ACCC in respect of its use of 'perfect for streaming' when promoting its retail broadband services that use the NBN and have a maximum download speed of 12Mbps with included data limited to 10 GB.

The refund will be paid by electronic funds transfer to your nominated account.

To take up this refund offer, or if you have any questions regarding this email, simply contact our dedicated customer service representatives on [TBC].

ANNEXURE E

SCRIPT OF OUTBOUND CALL TO CUSTOMERS

Hi [insert name]

I am calling from Dodo in relation to your former broadband service.

Following an investigation by the ACCC, Dodo have undertaken to give you a refund because we charged you excess data charges for internet usage of your broadband service that you entered into with us when we were describing that plan as 'perfect for streaming'. The refund will be set off against any outstanding amounts that you may owe Dodo.

This refund and offer is part of a court enforceable undertaking that Dodo has provided to the ACCC in respect of its use of 'perfect for streaming' when promoting its retail broadband services that use the NBN and have a maximum download speed of 12Mbps with included data limited to 10GB.

The refund will be paid by electronic funds transfer to your nominated account.

To take up this refund offer we can work out the amount of your refund and arrange payment now, or you can call us back through our dedicated customer service centre on [TBC].

