

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Tyco Australia Group Pty Limited trading as ADT Security

ACN 076 836 416

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Tyco Australia Group Pty Ltd (ACN 076 836 416) trading as ADT Security (**ADT**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

2. Background

- 2.1. ADT provides security services to residential and commercial customers, including the installation and monitoring of security cameras, home security alarms and smoke alarms.
- 2.2. Since at least 2016, ADT has entered into standard form 'customer service agreements' with residential consumers for the supply of home alarm systems and monitoring services (**Agreement**). The initial term for an Agreement is usually 36 months (**Initial Term**). After the expiry of the Initial Term, the Agreement proceeds on a month-to-month basis until the customer either terminates the Agreement or enters into a new Agreement with ADT.

3. ACCC Concerns

- 3.1. The ACCC considers that:
 - a. ADT has engaged in misleading or deceptive conduct and made false or misleading representations in relation to its right to seek payment for services from customers who have terminated their contract in accordance with their Agreement by continuing to issue invoices to those customers, in contravention of sections 18 and 29(1)(m) of the Australian Consumer Law (**ACL**) (being Schedule 2 of the CCA); and
 - b. certain terms in the Agreement are unfair contract terms within the meaning of section 24 of the ACL.

False or misleading representations and misleading or deceptive conduct

- 3.2. Since at least 2016, clause 3.3 of the Agreement has provided that a customer may terminate the Agreement at the conclusion of, or any time after, the expiration of the Initial Term by giving ADT at least 30 days prior written notice.
- 3.3. It was ADT's practice, following receipt of a customer's termination notice, to call the customer within five business days in an attempt to retain the customer. ADT would not terminate the service the subject of the termination notice unless and until it had spoken with the customer on the telephone. If the customer could not be contacted by telephone, ADT disregarded the termination notice and treated the Agreement as being on-foot, despite the customer having terminated their Agreement in accordance with clause 3.3.
- 3.4. In such cases, and after the 30-day notice period had elapsed, ADT continued to supply services to customers who had terminated their Agreement and continued to issue invoices to customers for those services.
- 3.5. The ACCC considers that by continuing to issue invoices to customers who had terminated their Agreement in writing (after the expiry of the Initial Term and after the 30-day notice period had elapsed), ADT made false or misleading representations that it had a right to payment for services, when in fact ADT had no such right, in contravention of section 29(1)(m) of the ACL. By doing so, the ACCC considers that ADT also engaged in misleading or deceptive conduct in contravention of section 18 of the ACL.

Unfair Contract Terms

- 3.6. The Agreement contains clauses that allow ADT, at its discretion, to:
- a. increase any fee payable under the contract after the first 12 months of the Initial Term - cl. 5.8 (**Fee Increase Clause**); and
 - b. vary the Agreement after providing one month's written notice to the customer of the proposed change - cl. 9.1(d) (**Unilateral Variation Clause**).
- 3.7. The Agreement also contains a clause that requires customers who terminate their Agreement within the Initial Term to pay an exit fee (**Exit Fee**).
- 3.8. The ACCC considers that the Fee Increase Clause and the Unilateral Variation Clause are unfair within the meaning of section 24 of the ACL. Having regard to matters including transparency and the contract as a whole, the ACCC considers the Fee Increase Clause and the Unilateral Variation Clause:
- a. cause a significant imbalance in the parties' rights and obligations arising under the Agreement;
 - b. are not reasonably necessary in order to protect the legitimate interests of ADT; and
 - c. would cause detriment to customers if ADT applied or relied on them,
- because these terms require customers to either:
- i. accept the fee increase or unilateral variation of their Agreement within the Initial Term, to the customers' detriment, or
 - ii. reject the fee increase or unilateral variation, which would require them to pay ADT an exit fee for terminating their Agreement within the Initial Term.

Lack of Transparency and Inadequate Disclosure of Exit Fees in the Agreement

- 3.9. The Agreement also contains clauses that:
- a. require customers who terminated their Agreement within the Initial Term to pay an Exit Fee. The Exit Fee is calculated according to a formula set out in the Agreement. A component of this formula is the Subscriber Acquisition Cost (**SAC**). The SAC reflects the costs incurred by ADT for the sale, advertising and installation of the security system; and
 - b. provide, in some instances, that where a customer terminates the Agreement the customer must pay a fee for the decommissioning of any ADT equipment installed at their property (**Decommissioning Fee**). The amount of the Decommissioning Fee is not set out in the Agreement and customers are unable to determine and consider these costs prior to entering into the Agreement.
- 3.10. The quantum of the SAC or the Decommissioning Fee is not set out in the Agreement.
- 3.11. The ACCC considers that the costs associated with both the Exit Fee and the Decommissioning Fee are not adequately disclosed to customers prior to entering into the Agreement, or prominently stated in the terms of the Agreement itself. This lack of transparency and inadequate disclosure prevents customers from being able to assess these costs prior to entering into the Agreement and results in customers incurring a number of unforeseen costs on the termination of their Agreement.

4. Admissions and Resolution

- 4.1. In response to the ACCC's concerns, ADT:
- a. admits that by continuing to issue invoices to customers who had terminated their Agreement in writing (after the expiry of the Initial Term and after the 30-day notice period had elapsed), ADT is likely to have made false or misleading representations that ADT had a right to payment for services, when in fact ADT had no such right, in contravention of sections 18 and 29(1)(m) of the ACL.
 - b. admits that the Fee Increase Clause is likely to be unfair within the meaning of section 24 of the ACL and therefore is likely to be void pursuant to section 23 of the ACL;

- c. admits that the Unilateral Variation Clause is unfair within the meaning of section 24 of the ACL and therefore void pursuant to section 23 of the ACL;
- d. acknowledges that the amount of the Exit Fee and the Decommissioning Fee were not adequately disclosed to customers before customers entered into an Agreement; and
- e. offers this Undertaking to the ACCC.

5. Commencement of this Undertaking

- 5.1. This Undertaking comes into effect when:
 - a. this Undertaking is executed by ADT; and
 - b. this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 5.2. This Undertaking has effect for three (3) years after the Commencement Date (**the Term**).
- 5.3. Upon the Commencement Date, ADT assumes the obligations set out in section 6 for the purposes of section 87B of the CCA.

6. Undertakings

Customer Retention Process

- 6.1. ADT undertakes that it will, from the Commencement Date, update its call centre scripts and internal processes to ensure that:
 - a. if a customer makes a verbal request to terminate their Agreement, they are informed by the call centre to put the request in writing (as per the Agreement); and
 - b. once a customer makes a written request that their Agreement be terminated, the 30-day notice period commences immediately (regardless of whether ADT is able to later contact the customer).

Redress Program

- 6.2. ADT undertakes that it will, within 30 days of the Commencement Date:
 - a. identify all customers who in the past 24 months:
 - i. have given written notice to terminate their Agreement; and
 - ii. whose Agreements were not terminated after 30 days of the written notice being received (where the customer had not expressly agreed with ADT to enter into another Agreement);

(Affected Customers)

 - b. for each Affected Customer, determine the amounts invoiced by ADT and subsequently paid by the Affected Customer for the period following the 30 day notice period (required by clause 3.3 of the Agreement);
 - c. write to each of the Affected Customers:
 - i. informing them of the terms and content of this Undertaking;
 - ii. informing them of the amount ADT has determined they paid after the 30 day notice period (the **refund amount**);
 - iii. informing them that the refund amount will be paid into the customer's bank account; and
 - iv. requesting that they confirm their bank account details with ADT in writing.
- 6.3. ADT undertakes that it will, within 14 days of the Affected Customer providing written confirmation of their bank account details to ADT, deposit the refund amount into the bank account of each Affected Customer.

Reporting to the ACCC

- 6.4. In respect of the Undertakings set out in paragraph 6.2, within 60 days of the Commencement Date, ADT will provide the ACCC with:
- a. a list of Affected Customers and the refund amount **for each**;
 - b. confirmation that it has written to each Affected Customer in accordance with paragraph 6.2(c); and
 - c. confirmation that each Affected Customer has:
 - i. been refunded the refund amount; or
 - ii. not been refunded the refund amount and the reasons why.

Amend ADT's Customer Service Agreement

- 6.5. ADT undertakes that it will, within 30 days of the Commencement Date, amend its Agreement to:
- a. remove customers' obligations to pay both the Exit Fee and Decommissioning Fee (where applicable), if it seeks to increase any fee by more than 5% per annum;
 - b. delete the Unilateral Variation Clause from the Agreement;
 - c. remove references to the SAC in the Agreement and specify the precise Exit Fee (to be charged per month remaining on the Initial Term) for each of its packages in a Schedule to the Agreement; and
 - d. specify that:
 - i. where the equipment is installed by ADT, the precise cost that ADT will charge for the Decommissioning Fee, and
 - ii. where the equipment is not installed by ADT, the customer is responsible for organising for the equipment to be decommissioned, including by arranging for a third party provider to decommission the equipment.

Inform ADT Customers

- 6.6. ADT undertakes that it will, within 45 days after the Commencement Date, contact each of its current customers who entered into Agreements in the past 36 months in writing to inform them of:
- a. this undertaking;
 - b. effective from the Commencement Date that ADT will:
 - i. waive customers' obligations to pay both the Exit Fee and Decommissioning Fee (where applicable), if it seeks (under clause 5.8 (Fee Increase Clause) to increase any fee payable under the Agreement by more than 5% per annum;
 - ii. not seek to rely on clause 9.1 (Unilateral Variation Clause) of the Agreement to vary the terms of the Agreement; and
 - c. their obligations to decommission the equipment at the end of the Agreement and that they have the right to engage another service provider to carry out the decommissioning.

Inform New Customers

- 6.7. ADT undertakes that it will, within 30 days of the Commencement Date, amend:
- a. its customer 'welcome letter' provided to customers to highlight the existence of the Exit Fee and Decommissioning Fee;
 - b. the Schedule (at the front of the Agreement) to:
 - i. state the dollar amount of the Decommissioning Fee applicable (where ADT is responsible for installation of the equipment) and require the customer sign their initials next to this cost, indicating they have read and understood the cost; and
 - ii. inform the customer that additional fees will be charged for decommissioning the

equipment in cases where ADT did not install the equipment.

- c. its call centre processes and scripts to require call centre staff to provide customers, prior to their entry into an Agreement, specific information regarding the Exit Fee and the Decommissioning Fee.

Compliance Program

- 6.8. ADT undertakes that, within three months of the Commencement Date and at its own expense, it will implement and subsequently conduct every six months for the duration of this Undertaking:
 - a. compliance training, provided by an appropriately qualified lawyer with expertise in the ACL, to its call centre staff and other relevant personnel in relation to their obligations under the ACL, including their obligations not to make false or misleading representations and not to engage in misleading or deceptive conduct; and
 - b. a review of a sample of 50 customer cancellations (from the 6 months prior) and all call centre scripts, processes and information provided to the sample of 50 customers who sent a termination notice in the previous 6 months to ensure compliance with both this Undertaking and the ACL (**Sample Review**).
- 6.9. ADT undertakes that, in conducting the Sample Review, it will:
 - a. where a material failure to comply with paragraph 6 of this Undertaking has been identified, within 14 days of identifying such failure, provide to the ACCC:
 - i. all material evidencing the material failure;
 - ii. the steps ADT has taken to address the material failure; or
 - iii. an outline of the steps that ADT proposes to take to address the material failure. ADT will then inform the ACCC once those steps are implemented.
 - b. maintain a record of, and store all documents relating to and constituting the compliance program for a period of not less than 5 years from the commencement date of this Undertaking.

ACCC Inquiries



- 6.10. During the period of this Undertaking, the ACCC may make reasonable inquiries of ADT with respect to compliance with this Undertaking. ADT must provide any information and/or documents sought by the ACCC within a reasonable period of time.

7. Acknowledgments

- 7.1. ADT 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 the ACCC's website;
 - b. the ACCC will, from time to time, make public reference to this Undertaking, including in news media 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 the alleged conduct.

Executed as an undertaking

Executed by Tyco Australia Group Pty Limited ACN 076 836 416, trading as ADT Security pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of company secretary
David Kirubi	Craig Glazier
Name of director (print)	Name of company secretary (print)
Date: 02 NOVEMBER 2020	Date: 02/11/2020

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

4 November 2020

Date

and signed on behalf of the Commission:



Chair

4 November 2020

Date