



Australian
Competition &
Consumer
Commission

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20 October 2008

Gary Looney
Box 191
Menindee NSW 2879

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Dear Mr Looney

Thankyou for your email dated 22 September 2008 and your subsequent correspondence regarding your complaint against Telstra.

As you may be aware, the Australian Competition and Consumer Commission (ACCC) is an independent statutory government authority charged with administering the *Trade Practices Act 1974* (the TPA). The object of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

I understand that in December 2005 a Telstra representative advised you by phone that the only internet service available to you was ISDN, and as a result you had an ISDN service connected. You claim that you should have been advised that satellite was an option for you under the Government's HiBIS scheme. You have also raised concerns that a Telstra representative advised you that wireless broadband was available at your residence, and on this basis you purchased a laptop computer. However, you were subsequently advised by another Telstra representative that wireless broadband was not available in your area.

You allege that Telstra's conduct is anti-competitive and unconscionable. You also consider that Telstra's conduct is aimed at "trapping" customers into accepting Telstra phone lines so that it will not lose customers to HiBIS-eligible satellite internet providers.

I consider that the provisions which could be relevant to the conduct you describe are sections 51AA, 52 and 53 of the TPA. Section 51AA of the TPA prohibits unconscionable conduct in commercial dealings. Section 52 of the TPA prohibits conduct in trade or commerce that is misleading or deceptive, or likely to mislead or deceive. Section 53 of the TPA prohibits false or misleading representations in trade or commerce.

Whether alleged conduct is misleading, deceptive or unconscionable is a question of fact to be determined based on the conduct itself and on the surrounding facts and circumstances. I have carefully reviewed all of the information that you have provided to the ACCC in connection with your complaint. Based on this information, it is not clear to me that the alleged conduct contravenes the TPA.

In addition, I should note that the ACCC's consumer protection focus is primarily on national issues or current localised issues that have wider public interest implications. The ACCC will

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generally only take enforcement action in relation to matters where there is significant detriment, which may be evidenced by a large number of complaints to the ACCC and/or the magnitude of potential or actual loss to consumers. While I understand that your experience with Telstra has been very frustrating, I do not consider that your complaint evidences widespread misconduct or consumer detriment.

In this regard, and based on the material you have provided, I understand that Telstra has made a number of offers to resolve your complaint and as a gesture of goodwill has offered to credit your account for the cost of the laptop computer which you purchased. Telstra has also offered to provide you with free installation of a two-way satellite internet service. Further, I note that the Telecommunications Industry Ombudsman reviewed your complaint and formed the view that Telstra's offer of resolution was exceptionally favourable and was aimed at resolving the dispute.

For these reasons, I do not consider it appropriate to take further action in relation to your complaint. I note that the TPA provides for private rights of action should you consider that the evidence supports your allegations of a contravention. In the event that you wish to pursue such further action, you may wish to obtain independent legal advice.

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Hebbard', enclosed within a circular scribble.

Kate Hebbard
Assistant-Director, Enforcement & Compliance
Communications Group

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