

TRADE PRACTICES ACT 1974 - SECTION 87B UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by One.Tel Limited ("One.Tel") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

The 0/20 plan

In the period from 1 September 1996 to 1 May 1997, One.Tel entered into contracts with customers for the provision of mobile telephone services on a tariff plan called the "One.Sim Plan \$0/\$20 Tariff Plan" ("the 0/20 plan"). The advertised conditions of the 0/20 plan included that it had no access fee, a \$20 minimum monthly call spend and a minimum term of fifteen months.

One.Tel's standard form contract for the supply of mobile telephone services to non-business customers was the "One.Form - Personal" ("the One.Form"). It was One.Tel's standard practice to provide customers entering into a contract with One.Tel based on the 0/20 plan with the One.Form and a tariff card for that plan. Different versions of the One.Form and tariff card were used throughout the period.

The terms and conditions on the reverse side of the One.Form included the following clauses:

Clause 4: One.Tel may vary these terms by prior notice in writing to the Subscriber

Clause 16: Unless agreed otherwise, One.Tel may vary charge rates at any time without prior notice to Subscriber. Rates can be checked at any time by calling One.Tel. Except to the extent that One.Tel agrees in writing that specified charge rates will not vary for an agreed period, One.Tel will bill for Services in accordance with the relevant tariff plan applying at the time calls are made. One.Tel may also charge taxes and duties incurred in provision of Services to Subscriber;

("the variation clauses").

Each version of the tariff card listed the call rates, monthly access fee and minimum call charges per month. The access fee was identified as "\$0*". The tariff card did not inform customers of the possibility of the introduction of additional fees during the minimum term of the contract. Later versions of the tariff card contained the words: "For all terms and conditions associated with this plan refer to the One.Form", in small print adjacent to an asterix.

In May 1997, One.Tel notified its customers on the 0/20 plan of the proposed introduction of a monthly access fee for those customers whose minimum monthly call spend was less than \$60. The new access fee required payment of \$12 per month after the twelfth month of their fifteen month minimum contract term, and first took effect in September 1997. One.Tel relied on the variation clauses of the One.Form to introduce the new access fee.

One.Tel states that the imposition of the access fee was not anticipated by One.Tel and that it arose as a result of a reduction in subsidies received from Cable & Wireless Optus. One.Tel also states that notwithstanding the imposition of the access fee, the 0/20 plan remained the most affordable plan available at the time.

The Commission has received numerous complaints about the imposition of the monthly access fee from One.Tel customers who were still within the minimum term of their contract when the fee was imposed. The customers allege that One.Tel did not inform them at the time of entering into their contract with One.Tel of the possibility of the introduction of access fees during the minimum term of the contract. They allege that neither One.Tel nor its dealers or agents drew their attention to the existence or effect of the variation clauses.

The variation clauses were in fine print on the reverse side of the One.Form. The Commission considers that, even if customers read this fine print, they would be unlikely to understand that clause 4 permitted the introduction of an access fee, contrary to the prominent representation in the title of the 0/20 plan and the advertising for the 0/20 plan that a zero access fee applied for the minimum term of the contract.

The Commission considers that in providing the One.Form and the tariff card to customers who entered into contracts with One.Tel from 1 September 1996 to 1 May 1997, One.Tel has misled or misrepresented to

those customers or potential customers, that the 0/20 plan had, and would have, no access fee for the minimum term of the contract, when in fact the terms of the contract, including those set out in the tariff card, were subject to variation under clauses 4 and/or 16 of the One.Form. The Commission is of the view that this conduct by One.Tel is in contravention of sections 52, 53(e) and 53(g) of the Act. The Commission is also of the view that the conduct may be unconscionable in contravention of section 51AB of the Act.

One.Tel accepts the Commission's concerns and gives these undertakings to redress the Commission's concerns and those of One.Tel's customers.

One.Tel has advised the Commission that, since the Commission brought these concerns to One.Tel's attention, One.Tel has also redesigned the One.Form to draw customers' attention to the variation provisions.

The CLI charges

In or around February 1999 One.Tel sent brochures to its mobile telephone customers in relation to Caller Line Identification ("CLI") services. The brochures advised customers, inter alia, that CLI services would in future attract a monthly fee of \$3. Customers were further advised that if they did not wish to continue to obtain the CLI services, at a cost of \$3 per month, they had to notify One.Tel of this by post, facsimile, telephone or internet. The brochure also stated that if customers did not contact One.Tel, the services would be provided and customers would be billed for them. However, One.Tel has not billed any customer for CLI.

The Commission considers that the brochure asserted that One.Tel had a right to payment for services that its customers had not solicited, when it ought reasonably to have known it did not have that right, contrary to section 64 of the Act. The Commission further considers that to issue any bill without a request for the services would have also contravened section 64 of the Act.

One.Tel withdrew the brochure without charging any customers and has advised its customers they will not be charged for CLI services unless they request the service. One.Tel did this as it was aware that to charge customers for unsolicited services would have contravened section 64 of the Act.

The Commission notes that the matters above occurred prior to One.Tel's recent enhancement of its compliance program.

The Commission acknowledges the co-operation of One.Tel in addressing these matters and in particular, notes that a number of the undertakings given by One.Tel go beyond those required to address the conduct and demonstrate a genuine commitment by One.Tel to become an industry leader in its dealings with its customers.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by One.Tel; and
 - (b) the undertaking so executed is accepted by the Commission.

OBLIGATIONS UNDER UNDERTAKING

0/20 plan refund

2. One.Tel will, within 45 days of the date of this undertaking, refund to each customer who entered into a contract with One.Tel between 1 September 1996 and 30 April 1997 (inclusive) for mobile telephone services based on the 0/20 plan, the amount of any access fees charged and paid by that customer in respect of any period prior to the end of the fifteenth month of the contract.

New services or features

3. One.Tel will not, from the date of this undertaking, impose on mobile telephone customers in the course of a minimum term fixed plan, any additional fees or charges for any new service or feature unless:
 - (a) One.Tel clearly and prominently informs the customer:
 - (i) that the new service or new feature is optional;
 - (ii) that he or she will be charged for the new service or feature if he or she requests the new service or feature;

- (iii) the amount of the additional fee or charge; and
 - (iv) whether the additional fee or charge may be varied and if so how it may be varied; and
- (b) One.Tel receives a positive request from the customer for that new service or feature.

Advertised or promoted charges

4. One.Tel will not, from the date of this undertaking, vary access fees or charges, minimum monthly call spends or other minimum monthly fees or charges applicable to any existing customers as at the date of this undertaking who are within the minimum term of their contract for mobile telephone services, where those fees or charges were specifically advertised or otherwise promoted by One.Tel, its dealers, servants or agents as the fees or charges applying to that plan (“the Advertised Charges”) unless One.Tel is simply passing on to the customer a statutory impost payable by One.Tel such as the GST.

Existing customers: Variation of contracts

5. One.Tel will only, in relation to existing customers at the date of this undertaking, impose a new type of charge or vary an existing charge (other than the Advertised Charges) that applies within the minimum term of the contract for mobile telephone services where:
- (a) the charge arises from the imposition or variation by One.Tel's carriers of any charge, subsidy or rebate incurred or received by One.Tel which is beyond the control of One.Tel and the amount of the charge to customers is limited to the amount reasonably believed by One.Tel to be necessary to meet the net consequences of the carrier's conduct; and
 - (b) One.Tel has provided affected customers with at least 30 days written notice of the proposed variation prior to imposing same.

This clause does not apply to variation of call charges.

New customers: Reliance on variation clauses

6. One.Tel will not rely on any provision of any agreement with a customer entered into on or after the date of this undertaking which permits One.Tel to introduce a new type of charge, or vary fees or charges under, or vary the terms and conditions of, that agreement unless:
 - (a) the existence and effect of such provision has been clearly and prominently drawn to the customer's attention at the time of entering into the agreement; and
 - (b) in any case One.Tel provides the customer with at least 30 days written notice of the proposed variation prior to imposing same.

Amendments to standard form contract for provision of mobile telephone services

7. One.Tel will, within 60 days of the date of this undertaking, amend its standard form contract for provision of mobile telephone services to indicate clearly and prominently:
 - (a) which fees or charges are fixed ("guaranteed charges");
 - (b) the amount of each guaranteed charge;
 - (c) the period for which each guaranteed charge remains fixed ("the guaranteed period");
 - (d) in what circumstances guaranteed charges may be varied after the end of the guaranteed period and how they may be varied;
 - (e) which fees or charges are variable ("variable charges"); and
 - (f) in what circumstances variable charges may be varied and how they may be varied, including that variable charges will not be varied without at least 30 days prior written notice.

Compliance program

8. One.Tel will, within 90 days of the date of this undertaking, complete a compliance program that is in accordance with the Australian Standard

for Compliance Programs AS-3806, with particular regard to sections 52 and 53 of the Act.

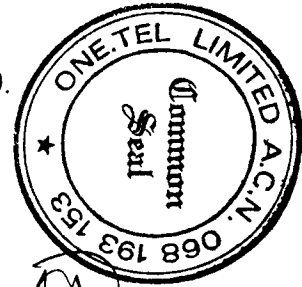
9. One.Tel will, from the date of this undertaking, amend all new dealer agreements in such manner as to ensure that One.Tel dealers are required to undertake and comply with the compliance program referred to in paragraph 8 above.
10. One.Tel will, from the date of this undertaking, make all reasonable endeavours to ensure that all existing One.Tel dealers undertake the compliance program referred to in paragraph 8 above and cause their staff to undertake the program.

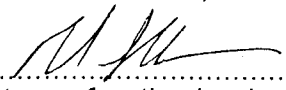
ACIF Industry Code: Customer Information on Prices, Terms and Conditions

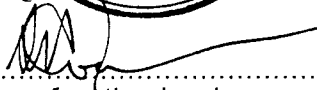
11. One.Tel will amend its standard form contract for the supply of mobile telephone services to ensure that its contract complies, at a minimum, with the Industry Code Customer Information on Prices, Terms and Conditions ("the Code") prepared by the Australian Communications Industry Forum, within 60 days of that Code being finalised. One.Tel will continually review and amend its documentation within a reasonable time of it becoming aware of changes to the Code to ensure that it complies, at a minimum, with the Code as amended from time to time.
12. One.Tel will join the Code as a signatory as soon as practicable once the final version is available for signing.
13. One.Tel notes that the Commission may make public the terms of this undertaking.

EXECUTED on the 1 day of ^{October} September 1999.

The Common Seal of One.Tel Limited was affixed in accordance with its Articles of Association in the presence of:




.....
Signature of authorised person


.....
Signature of authorised person


DIRECTOR
.....
Office held

Secretary
.....
Office held

MARK SILBERMANN
.....
Name of authorised person
(block letters)

Steven Hodgson
.....
Name of authorised person
(block letters)

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION


.....
Chairman

Dated 7 October 1999