



THE TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission for the purposes of Section 87B of the Trade Practices Act 1974

by

Tyco Australia Pty Limited trading as ADT Security

ACN 008 399 004

Background

- 1 Tyco Australia Pty Limited, trading as ADT Security (**ADT**), provides various security services to private and commercial clients. This includes providing remote alarm monitoring and related services to residential customers. Sales of such services to residential clients are made through independent third party dealerships authorised by ADT (**The Authorised Dealers**) in addition to some direct sales by ADT. The Authorised Dealers market and sell various security systems and services to customers. Where a sale is made which includes the monitoring of a customer's alarm system, the Authorised Dealer enters into a Customer Service Agreement with the customer and then assigns that Customer Service Agreement to ADT.
- 2 ADT provides a standard 24 hour, 7 day security monitoring service to all residential customers who are signed up for this service. As part of this monitoring service, weekly tests are run by ADT on each active monitored system. The weekly tests automatically generate a test signal on each active monitored system and customers are notified in the event that the 'normal' test signals are not received, to enable arrangements to be made for inspection and repair of the system.
- 3 From August 1998 to June 2001 and from March 2002 until approximately August 2003, ADT offered 'Preventative Maintenance' as an optional extra. This service costs an additional monthly amount of between \$5.00 and \$6.00 (exclusive of GST) for which the customer receives an annual visit and check of their security system. Preventative Maintenance does not give any discount on any additional call out fees for faults not otherwise covered by the product or service warranty.
- 4 Since 1997, ADT has also offered an optional 'Extended Warranty'. The Extended Warranty provides a discounted flat call out fee of \$35.00 (including GST) plus parts for a service calls where the repair required is not otherwise covered by the product or service warranty. This is a discount from the standard \$99.00 (including GST) call out charge. The Extended Warranty does not include an annual preventative maintenance service visit. The Extended Warranty is also charged at between \$5.00 and \$6.00 (exclusive of GST) per month.

Concerns raised by Commission and ADT's response

- 5 In a letter dated 28 May 2003, the Australian Competition & Consumer Commission (**Commission**) informed ADT that it had received complaints from ADT customers that they had been making payments to ADT in respect of the provision of an annual maintenance service, but had not received this service.

- 6 The Commission expressed concern that ADT had made false or misleading representations in contravention of section 52 of the Trade Practices Act 1974 (**the Act**) by informing customers they would receive this service and not providing it as offered. The Commission also expressed concern that, if ADT had accepted payment for maintenance services that it did not intend to supply, ADT would have contravened section 58 of the Act.
- 7 In a response to the Commission's initial enquiry, ADT undertook a detailed review and reconciliation of its residential customer contracts and processes for the provision of maintenance services in New South Wales, the ACT, Queensland and Victoria. This involved ADT reviewing a large number of contracts to confirm that its database accurately recorded the services the customer was entitled to receive and to confirm that the contracted services had been provided.
- 8 These reviews disclosed a number of issues which had affected the integrity of the ADT customer database and consequently the delivery of the maintenance services. In particular it disclosed that a significant number of customers who had contracted to receive an annual maintenance service were recorded on ADT's database as contracting for Extended Warranty and therefore had not received the maintenance visit. It also indicated that in some instances, due to either data entry errors or scheduling errors, some customers had missed maintenance visits.
- 9 The review also disclosed that in Queensland some Authorised Dealers had altered the standard Customer Service contract to offer maintenance services during periods when this service was not offered by ADT. In these instances it is unclear what service the customer was informed they would be receiving for the additional payment levied.
- 10 Following the review and reconciliation process conducted by ADT, customer records in New South Wales, Queensland, the ACT, Victoria and Tasmania have now been updated. Additional resources have also been dedicated to seek to ensure that ADT has met its current maintenance obligations.
- 11 ADT has not intentionally failed to supply preventative maintenance services to residential customers. ADT however acknowledges that, due to database and scheduling errors, it has not provided all preventative maintenance services to residential customers that it had contracted to provide.
- 12 In a further response to the Commission's concerns ADT hereby offers the following undertakings for the purposes of section 87B of the Act.

Commencement of Undertakings

- 13 These undertakings will come into effect when:
- 13.1 The undertakings are executed by ADT; and
 - 13.2 The undertakings so executed are accepted by the Commission

Undertakings

- 14 ADT will write to all its customers who have contracted for maintenance services, but did not receive these services in any year since the commencement of the authorised

- dealer program in 1999 in each of New South Wales, the Australian Capital Territory, Victoria and Tasmania. This correspondence will comprise a letter of explanation and apology and a refund cheque in the amount of \$66.00 (including GST) for each missed maintenance visit. This mail out has been completed by the date of this undertaking.
- 15 ADT will also send an apology letter to all Queensland customers who have been paying an additional amount to confirm whether they understood that they were entitled to an annual maintenance visit, or to 'Extended Warranty' services and giving the customer the option to confirm either service, or to swap services. The Queensland customers will be provided refunds by ADT if they indicate that they believed they were entitled to the preventative maintenance and did not in fact receive such services. This will be an amount of \$66.00 (including GST) per missed maintenance visit. ADT's database will be updated accordingly to ensure the nominated service is provided going forward. This mail out has been completed by the date of this undertaking.
- 16 Within 3 months of the Commission accepting this undertaking, ADT will commence a review and reconciliation process for all its residential customers in the Northern Territory, South Australia and Western Australia to identify any customers in those jurisdictions who had contracted for, but not received, maintenance services.
- 17 Upon the conclusion of the review and reconciliation process in Northern Territory, South Australia and Western Australia, ADT will write to any residential customers identified in these jurisdictions who had contracted for, but not received, maintenance services and will provide each of these customers with a refund in the amount of \$66.00 (including GST) for each maintenance visit they had paid for but not received.
- 18 ADT will by 31 October 2004 provide the Commission with a written report giving the number of customers who responded to the apology letter and an overview of the total compensation provided to those customers on an aggregated State by State basis. This report will not identify the individual respondent customers. The Commission will not disclose any part of that report to any other person or make use of that report except for the purposes of consultation with ADT.
- 19 ADT will take all reasonable steps to ensure that:
- 19.1 All residential customers who are entitled to receive maintenance services receive these services in accordance with their contractual terms.
 - 19.2 ADT has adequate data management systems to enable it to identify which residential customers are entitled to annual maintenance and when the maintenance is due.
 - 19.3 ADT's Authorised Dealers are fully aware of and do not misrepresent, the services offered by ADT.
- 20 ADT's existing trade practices compliance program (the **Compliance Program**) will be continued by ADT for a minimum of 5 years from the date of this Undertaking and will be audited for each of the first 3 years from the date of this Undertaking, at ADT's expense, by an independent auditor who is a compliance professional acceptable to the Commission.

- 21 Within 6 months of the date of this Undertaking ADT will implement, for its ADT Security business, a complaints handling system which will be designed to comply with the requirements of Australian Standard 4269-1995.

Application of Undertakings

- 22 The application of these undertakings is limited to ADT's security business only and does not apply in any way to other business operations within Tyco Australia Pty Limited, its parent company, subsidiaries or other related bodies corporate.

Acknowledgements

- 23 ADT acknowledges that the Commission may make this undertaking available for public inspection.
- 24 ADT acknowledges that the Commission may from time to time publicly refer to this undertaking.
- 25 ADT acknowledges that this undertaking by no way derogates from the rights and remedies of any person arising from the alleged conduct.

IN WITNESS of these undertakings and its agreement the common seal of **Tyco Australia Pty Limited trading as ADT Security** was affixed, witnessed by the following persons:



[Handwritten signature of Ian Stanley Milne]

 Signature of authorised person
Ian Stanley Milne
 Managing Director

 Office held

[Handwritten signature of Karl Robert Davies]

 Signature of authorised person
Karl Robert Davies
 Finance Director

 Office held

.....
 Name of authorised person (print)

.....
 Name of authorised person (print)

Acceptance by the Australian Competition and Consumer Commission
 pursuant to section 87B of the Trade Practices Act 1977

[Handwritten signature of Graeme Samuel]

 Graeme Samuel
 Chairman
 23rd June 2004