

ACIF moves on “slamming”

Following the Australian Communications Industry Forum’s (ACIF) commissioning of a report on selling practices, conducted by the Communications Law Centre, ACIF has decided to work towards developing a Code to deal with entrenched industry practices on the unauthorised transfer of customers, otherwise known as “slamming”

In order to assist its consideration of the need for a telecommunications Industry Code covering selling practices, the Consumer Codes Reference Panel (CCRP) of the Australian Communications Industry Forum (ACIF), recently commissioned the Communications Law Centre (CLC) to provide research on current legislation, other regulatory requirements and consumers’ experience in the area of selling practices.

The terms of reference for the project required the CLC to survey, audit and collate existing Australian regulatory and self-regulatory information. As part of the process, the CLC consulted widely and sought to identify the following issues:-

- consumer complaint statistics and trends;
- the type of enforcement mechanisms available to consumers;
- the practical difficulties facing consumers in enforcement;
- the cost (to consumers) of pursuing enforcement actions; and
- impediments to the effectiveness of existing legislative provisions.

The focus of the report was telecommunications. It was important to identify early in the project, what was sold to consumers and how it was sold. This allowed the identification of particular concerns, service providers, regulators and consumer groups, in specific areas.

Practices

The main telecommunications products currently on sale to residential and small business customers are local, long distance and international telephone services, mobile telephone services and handsets, Internet access, enhancements to directory listings and pay television. Selling activity occurs in a number of environments:-

- retail outlets;
- inbound and outbound telemarketing;
- door-to-door sales;
- over the Internet; and
- mail order.

Problems

The concerns expressed about selling practices in these environments were extensive. The Australian Competition & Consumer Commission (ACCC) advised that telecommunications has generated more complaints than any other industry in recent years. Misleading and deceptive conduct of various kinds provides the main source of complaints.

A number of specific cases are documented in the report, but concerns were expressed by *service providers* about:-

- the inconvenience and costs of comply-

ing with inconsistent State legislation regulating door-to-door selling;

- misleading and deceptive conduct by sales staff selling their competitors products, including unauthorised transferral of their long distance and international customers to other service providers (slamming), sometimes involving fraud.

Regulatory agencies and consumer organisations expressed concerns, among other things, about:-

- misleading and deceptive conduct by sales staff; for example about the impact of documents a potential customer is asked to sign (“often resulting in slamming”);
- charges for unauthorised services (cramming);
- securing “authorisation” for services or changes to services from people whom the seller should reasonably suspect are not able to give such authorisation. This problem is exacerbated with products targeted at young people;
- delays in addressing problems;
- certain issues relating to door-to-door selling;
- inability to return goods/services to temporary selling booths; and
- inaccessibility of remedies where the problem is not acknowledged by the service provider.

The US Experience

A section of the report summarised regulatory responses to key telecommunications selling practices issues in the US, where the practice of slamming is a major and growing problem. The most recently-revised rules refine the requirements for service providers to obtain verification for

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service transfers from customers and relieve a slammed customer of any liability to pay for a service 30 days after being slammed. The Federal Communications Commission (FCC) can prosecute slamming violations, with available sanctions including fines (“forfeitures”) of up to US\$110,000 and revocation of operating authority. The current FCC rules establish a standard forfeiture of US\$40,000 for violations of its rules, with higher amounts possible depending on the severity of the conduct.

Mechanisms for seeking redress

The report found that there are four broad ways in which a consumer or small business can seek to address a problem with selling practices in telecommunications:-

- make a complaint to the Telecommunications Industry Ombudsman (TIO);
- make a complaint to the complaints handling bodies of the Telephone Information Services Standards Council (TISSC) or the Australian Direct Marketing Association (ADMA) if the matter falls within the relevant codes;
- make a complaint to the ACCC or State Departments/Offices of Fair Trading, which may take the matter up with the service provider or commence legal action in its own right or on behalf of the consumer, or, in a class action, on behalf of a group of consumers;
- commence legal action.

However, not all these approaches are available for all kinds of inappropriate selling activities.

Options and arguments

Having considered the effectiveness of redress mechanisms, the report then identified some of the argu-

ments for and against developing a code. Some of these are as follows:

Arguments for a selling practices code:

- there are serious problems in the industry which are demonstrated by complaints statistics of the TIO and ACCC and cases handled by relevant agencies.
- these problems are likely to worsen with the increased complexity of telecommunications goods and services, and with the likely growth in local call sales activity following the ACCC’s decision about access to Telstra’s local loop.
- US experience confirms the durability of selling practices problems without firm regulatory intervention.
- the current regulatory arrangements in Australia are fragmented and inconsistent, especially the different requirements of State door-to-door selling Acts. This creates confusion among sellers and consumers, limits the protection available to consumers in some states and increases both the costs of compliance and the likelihood of non-compliance by industry. A single code creating a national framework with industry-specific detail would overcome these problems.
- the development of a code would provide an opportunity for stakeholders to reach agreement about reasonable performance standards for telecommunications selling activities. This would reduce the likelihood that litigation would be needed to achieve shared understandings about minimum statutory requirements. It would also encourage consistency in the handling of complaints.
- available remedies, particularly for unconscionable conduct and harassment and coercion, are

ineffective or inaccessible to the consumers they are designed to assist and protect. This results from lack of awareness of the available remedies and the cost and complexity of enforcing them through the courts.

Arguments against a selling practices code:

- the problems are declining and will continue to do so as the competitive industry matures and consumers become more sophisticated.
- the industry has taken significant steps to reform its internal processes to address the problems. This includes validation of all orders taken by door-to-door sellers
- the bulk of the major problems are already covered by legislation or the common law of contract.
- a code which does not cover dealers and agents would be ineffective in addressing selling practices problems, given the prevalence of agents in the selling of telecommunications products to residential and small business customers.
- a voluntary code is unlikely to discipline the conduct of those already breaching existing legislation.

The Result

Following a presentation of the report, the CCRP decided, subject to ACIF processes and the approval of the ACIF Board, to develop a Selling Practices Code focused on the unauthorised transfer of customers, with the practice of slamming, the main area of concern.

The report is available on ACIF’s website at <http://www.acif.org.au>.

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