



Australian
Competition &
Consumer
Commission

THE fair call

GUIDE FOR CONSUMERS

This guide to the Trade Practices Act covers some of the responsibilities that businesses have when they market telecommunications products to consumers. We haven't tried to cover the whole Act, only those issues that consumers often raise about telecommunications services.



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WHY YOU SHOULD READ THIS GUIDE

The ACCC has made compliance with the Trade Practices Act in the telecommunications industry a priority. This guide is a part of that strategy—to explain some of the common terms used in telecommunications advertising and to highlight things you should be aware of when buying telecommunications products and services. It has been written in everyday language, avoiding legal terms wherever possible.

INDUSTRIES COVERED BY THIS GUIDE

This guide applies to telecommunications services including:

- internet services
- mobile phones.

INTERNET SERVICES

'Unlimited' internet use

You should confirm the meaning of the word 'unlimited' when buying an internet service. For example, an ISP that has a policy of disconnecting users after a specified time period is not offering unlimited use, even if the user can reconnect right away.

You should also be aware of download limits that apply to your internet service. Time and download are inextricably linked—the more time spent connected to the internet, the more data is downloaded. Consumers should be aware of any excess download costs which may be associated with their internet service.

The ISP should have an acceptable use policy (AUP) clearly stating what is, and what is not, acceptable use. An AUP should not be used to qualify an unlimited or free offer.



Call connection costs

You should find out whether an ISP charges extra for connection. If it does, these charges should be clearly disclosed. Any connection premium, such as a long distance call charge for users in regional areas, should be clearly disclosed. This is particularly important if the product is described as pre-paid.

Performance

If an ISP makes a claim about speed of connections it must provide the promised performance, and not just during an introductory period but over the term of the contract. The promised performance must be met at all times, including peak-use periods.

For further details on ISP issues, see *Fair.com*, a free guide available from the ACCC Infocentre on 1300 302 502, or download from the ACCC website www.accc.gov.au.

MOBILE PHONES

Network unlock fees

If a separate fee is payable for gaining access to the mobile network after buying the handset, the provider should clearly disclose this extra cost and any conditions relating to it.

Network switching fees

You should be made aware of any service fees or other charges if you change service providers before your contract expires.

Bundled costs

Mobile phone retailers often offer handsets for 'free' or 'zero dollars' but recover the cost of the handset directly from the consumer over the life of the contract, or if the contract is terminated early, through:

- call charges
- ongoing monthly network access fees
- fees for early termination
- an unlock fee if the consumer wants to use the handset on another network.

In such situations the handsets and mobile access service is essentially a bundle. It is unlikely that the handset is free at all and it would be more accurate if they were advertised as 'zero dollars upfront'. Conditions must be clear and cannot contradict the prominent messages of the advertisement.

Dealing with minors

Extra care needs to be taken when marketing services to children. Relevant law and state legislation must be consulted regarding the ability of minors to contract for services.

Relevant state laws, with the exception of NSW, have an underlying assumption that if a person is under age they cannot enter into a legally binding contract other than for 'necessaries'. Whether the contract is for necessities will depend upon the individual young person and the services to be provided under the contract. Contracts will not bind a young person if they contain provisions which are so unfair as to render the whole contract not for the minor's benefit.

In NSW, under the *Minors (Property and Contracts) Act 1970*, the general rule is that a young person who enters a contract is bound by it if the contract is for the young person's benefit.





DANGER WORDS TO BE AWARE OF

Free—is it really free or is the cost disguised in another price?

Mobile phone handsets are often advertised as 'free' or 'zero dollars', but the cost of the handset is often recovered directly from the consumer over the life of the contract, or in a termination fee if the contract is terminated early.

For advertisements of free internet hours, if the free service depends on some other conditions being met (such as providing a credit card number or connecting to a particular ISP), this must be clearly stated.

Introductory offers—If certain features or offers are only available for a limited time or trial period, you should not have to arrange for disconnection once the trial period ends.

Conditions apply—principal conditions must be clearly stated.





IMPORTANT FACTS TO BE AWARE OF

- When considering telecommunications services, it is important to confirm that the service is available in your area before signing a contract. If access to a service is limited, this must be clearly stated. Check terms and conditions to confirm that the relevant service is available to you. This is particularly important when considering mobile phone services.
- If an offer or promotion does not apply to all calls, for example those made to or from mobiles phones, it should be clearly stated. For example, 'not applicable to calls to or from mobiles'.
- Consumers should be made aware of important conditions—for example, conditions that impose penalties for termination or if an offer involves minimum levels of usage or expenditure.





HIGH RISK MARKETING PRACTICES

In the highly competitive telecommunications industry, businesses are often looking for new and innovative ways to market their products to consumers. While the Trade Practices Act encourages vigorous competition, businesses should not step over the line, especially when dealing with vulnerable or disadvantaged consumers.

Door-to-door selling

When door-to-door selling, businesses must give consumers an opportunity to fully read and understand all the terms and conditions of the contract. If you are not sure that they have fully understood everything, you should seek independent advice. High pressure selling tactics, especially when used on vulnerable or disadvantaged consumers, place businesses at risk of breaching the Act.

Changing carriers

If changing carriers, make sure you fully understand any agreements you enter into. Slamming, which refers to the practice of switching consumers to another carrier without their permission, is illegal.

Cooling off periods

Your state or territory may have legislation requiring businesses to provide a cooling off period. This gives you the opportunity to think about whether or not you want to take up the service before signing the contract.



OTHER RELEVANT PUBLICATIONS

Fair.com

This publication outlines some of the issues that internet service providers need to take into account when planning, advertising and marketing their services. Available free in hardcopy or from the ACCC website.

Internet auctions

This publication outlines what buyers and sellers should bear in mind when using the internet to auction goods and services.



For more information, visit:
www.accc.gov.au

or phone the ACCC Infocentre on
1300 302 502

