

**Component Pricing
Competition and Consumer Policy Division
The Treasury**



To whom it may concern,

Re: Component Pricing - Trade Practices Legislation Amendment Bill (No 3) 2006

Please find attached ACIF's submission in response to the Proposed Amendment to S.53C of the *Trade Practices Act 1974*.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'A. C. Hurley', with a long, sweeping tail.

Anne Hurley
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Australian Communications Industry Forum (ACIF)

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PROPOSED AMENDMENT TO S.53C OF THE TRADE PRACTICES ACT 1974 ACIF SUBMISSION

1. Introduction

ACIF is pleased to have this opportunity to make a submission to the Treasury on proposed amendments to the *Trade Practices Act 1974 (Cth)* (the Act), as provided in the *Trade Practices Legislation Amendment Bill (No 3) 2006* (the Bill).

ACIF's membership comprises carriers/carriage service providers, business and residential consumer groups, industry associations and individual companies. Its mission is to provide leadership through a neutral forum, independent of individual interests, in which all Australian communications industry stakeholders cooperate in the development of initiatives that foster the effective and safe operation of competitive networks, the provision of innovative services and the protection of consumer interests.

Because of the nature of the goods and services offered by telecommunications providers, it would be difficult for the industry to comply with the proposed amendment to s.53 (and related sections) that would require specification 'in a prominent way and as a single figure, the total minimum price' for goods and services.

The industry's response to this issue has been to ensure that Consumers are as fully informed as possible about the price of any telecommunications goods and services they purchase under requirements in the ACIF Code ACIF C521:2004 **Customer Information on Prices, Terms and Conditions** Industry Code (the PTC Code).

2. Proposed Change to the Act

What is proposed by the amendments is to replace the requirement in s.53C (with similar change to subsection 12DD(1) and subsection 75AZF(2)) to specify the 'cash price' for goods or services with the need to specify '*in a prominent way and as a single figure, the total minimum price*' for goods and services.

The accompanying Explanatory Memorandum says the purpose of the amendments is to clarify that corporations should not make a 'partial representation as to the price of a product or service' without also specifying, in a prominent way and as a single figure, the total minimum price – that consumers should be able to readily identify the price they will pay for a product

The Explanatory Memorandum recognises that the concept of 'total minimum price' may be difficult to apply in a number of situations, particularly where 'component pricing' is used and suggests the following:

- 'Where the amount will vary according to the nature of the purchase' - the total minimum price can be represented as 'relevant to the type of consumer most likely to purchase the product or service';
- 'Where the amount of a particular component will vary according to a decision of the purchaser' the requirement would be to provide a 'minimum price for which the product or service can be obtained'; An example provided was for a 12 month mobile contract, in which case the minimum

total price is 'the aggregate minimum amount the consumer will be required to pay over 12 months';

- 'Where the total will depends on the quantity purchased by a consumer, the total minimum price should be specified as a per quantity amount'. The example provided was the provision of a per kilo price for food bought by the kilo.

3. Telecommunications Goods and Services

For telecommunications goods and services, it would be extremely difficult to identify a 'minimum total price'. The price for telecommunications goods and/or services includes:

- Usage charges, which will not only vary from customer to customer, but vary for each customer from one billing period to another. It will also vary on the type of services used (voice, text, messaging services, internet etc)
- Many telecommunications contracts are not for fixed duration and therefore it is not possible to determine in advance what the total sum of access and usages charges will be. Further, in many cases, fixed contracts are held over, again making computation of a total minimum charge problematic
- Many telecommunications goods and/or services offered combine a number of elements, including optional services, and different accompanying customer equipment, and the nature of services selected (voice, text, messaging, internet, email)

As a consequence of the nature of the goods and services provided by the telecommunications industry, the Explanatory Memorandum's suggestions on how to handle 'component pricing' do not recognise the difficulties industry will face in trying to provide a 'minimum total price'.

For example, the suggestion that a 'minimum total price' might be represented by the nature of the most likely purchaser of the product, does not take account of the range of goods and services offered or the fact that it would be almost impossible to identify a 'likely purchaser', given the almost universal penetration of telephone services in Australia.

In situations where particular components are up to the decision of the purchaser, the Explanatory Memorandum's advice is to set out the minimum price for which the goods or services can be obtained. To the extent that amount can be computed, this is current industry practice. Again, however, the potential variability of the duration of the package and the range of components of the package will not necessarily result in an informed consumer.

The final suggestion is that where the total price will depend on the quantity purchased by a consumer, the total minimum price should be specified as a per quantity amount. This might apply in the case of a per month charge for contracts of no fixed duration, but will, again depend on other decisions including the customer equipment and services purchased.

4. Existing Codes

4.1 PTC Code:

The PTC Code was recently revised by an ACIF Working Committee comprising representatives from industry and consumer organisations, the ACCC, the TIO and ACMA. The Code has been registered by ACMA and is therefore enforceable against carriers and carriage service provider.

The Working Committee considered requirements under the Act, particularly in relation to the current requirement for provision of a 'cash price'. The Code rules address the issue of ensuring that consumers are as fully informed as possible about the price of the goods and services they are purchasing, while recognising the nature of the goods and services offered by industry.

Relevant Code rules:

- 6.6.1 *On request of a Customer a Supplier must Inform the Customer of the charges to the Customer that may apply under a Contract including the amount or the method by which the Customer may calculate those charges.*
- 6.6.2 *Before entering into a Contract which is subject to a Minimum Total Charge over a fixed period, a Supplier must inform the Customer:*
 - (a) *of the Minimum Total Charge, or each component of the Minimum Total Charge, to enable a Customer to determine the Minimum Total Charge; and*
 - (b) *if the Minimum Total Charge or components of it may vary during the term of the Contract.*
- 6.6.3 *In any Contract, a Supplier must state:*
 - (a) *what charges may apply;*
 - (b) *what the charges relate to;*
 - (c) *the amount of each type of charge or manner of calculation;*
 - (d) *the frequency of the charge or circumstance giving rise to the charge becoming payable; and*
 - (e) *if the charges stated may be varied or other charges introduced during the term of the Contract, any information about the rights and obligations Customer and Supplier may have in relation to the variation.*

Minimum Total Charge is defined in the Code to mean

- (a) *the total of:*
 - (i) *equipment price;*
 - (ii) *any connection fee;*
 - (iii) *any compulsory periodic charges;*
 - (iv) *any minimum usage charges;*
 - (v) *any other compulsory charges; or*
- (b) *(b) a fixed contract price, over the minimum or fixed period of the Contract if applicable.*

4.2 Consumer Contracts Code

The ACIF C620:2005 **Consumer Contracts** Industry Code provides additional consumer protection by, *inter alia*, requiring service providers to notify their customers of any change to the terms and conditions of the customer's fixed term contract, and giving the customer an opportunity to exit that contract without penalty. Specifically, the Code provides that a contract with a customer will be considered as unfair if it has the object or effect of:

Clause 6.1 (j)

permitting the Supplier to unilaterally amend or vary the characteristics of goods or services, including price, in a Contract with a Fixed Contract Period (except as provided in clauses 6.3(n) to (t) below) without:

- (i) issuing a Notice in Writing to the Consumer at least 21 days prior to the date on which the variation is intended to take effect; and
- (ii) offering the Consumer in the notice the right to terminate the Contract within 42 days of the date of the notice referred to in subclause (i) above without incurring fees or charges other than:
 - (A) usage or network access charges incurred up to the date on which the Contract ends; and
 - (B) any outstanding amounts that cover installation costs or equipment (where such equipment can be used in connection with services provided by other Suppliers);

NB: The exceptions provided in Clause 6.3(n)-(t) are generally circumstances beyond the service provider's control, and where the possibility of change forms part of the contract.

The effect of the code provisions in the PTC and Consumer Contracts Codes is that consumers must be made as fully aware as possible of the price of the goods and services being purchased and if those prices are changed such as to cause detriment to a customer on a fixed term contract, that customer must be given the opportunity to exit the contract without penalty.

5. Conclusion

The purpose of the proposed amendments to the Act is to ensure that consumers should be able to readily identify the price they will pay for a product or service. In the telecommunications industry, this aim is achieved with Code rules that ensure that consumers are, as far as is possible, fully informed with all relevant price information, with the added protection that, if the price changes to the customer's detriment, they will be able to exit the contract.