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INDUSTRY BRIEFING

Changing Landscape for Contracts and Information Provision

CONSUMER CONTRACTS CODE
Introduction & Context Setting

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INDUSTRY BRIEFING

CONSUMER CONTRACTS CODE
Key Provisions


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OVERVIEW

- Scope of the Code
- Fairness of Terms and Exceptions
- Intelligibility and Accessibility of the Contract
- Implementation timeframe




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SCOPE OF THE CODE

Covers all contracts of Carriage Service Providers (Including ISPs) for the supply of for the supply of:

- Carriage services (including fixed line, mobile and internet)
- Other telecommunications goods or services provided under the contract
- Content services supplied in connection with the supply of the carriage service (excluding contracts for Pay TV)




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SCOPE OF THE CODE (continued)

With consumers - defined as

- A person who acquires the service for personal or domestic use, or
- A small business that has an annual spend of less than \$20,000 with the CSP.



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BASIC RULES

- The terms in contracts covered by the Code must be fair
- Contracts must be intelligible and accessible
- The terms of the bargain itself (*what you bought and paid for*) are NOT assessed

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FAIRNESS OF CONTRACT TERMS

Basic Test of Unfairness

- *Contrary to good faith*
- *In all the circumstances*
- *Causes a significant imbalance in the parties rights and obligations*
- *To the detriment of the consumer*

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FAIRNESS OF CONTRACT TERMS

Potentially unfair terms

- **Unilateral variation or amendment of the characteristics or price of the goods and services without giving notice and offering the customer the right to terminate without incurring a charge for doing so**
- **Automatic extension or renewal of a fixed term contract without the customer's express consent**
- **Requiring more than 30 days notice to terminate a contract**

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FAIRNESS OF CONTRACT TERMS (continued)

Restriction, suspension or termination of the service unless it is

- **For maintenance or repair,**
- **For fraudulent or illegal conduct**
- **For suspecting a credit risk**
- **For breach of an acceptable use policy**
- **Unless there has been 30 days notice and either a refund or, if agreed, use of credits for another service are provided**

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FAIRNESS OF CONTRACT TERMS – EXCEPTIONS

Suspension or termination of the service will not be considered unfair for:

- Non-payment of accounts
- Customer death, bankruptcy or insolvency
- A threat to network safety or security or provision of service is a danger to health/safety
- In cases of emergency, or to meet legal/regulatory requirements
- *Force majeure*

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FAIRNESS OF CONTRACT TERMS – EXCEPTIONS (continued)

- Provision of special offers – if clearly stated
- Requirement for payment of a security bond
- Variation of the price for international calls/international roaming
- Variation of charges for fee or charge imposed by law
- Variation of the price when the supplier is reliant on a 3rd party for supply
- When the variation benefits, is neutral to or of only minor detriment to the customer.

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INTELLIGIBILITY AND ACCESSIBILITY OF THE CONTRACT

Main rules

- Contract terms must be in plain language
- Contract terms must be legible and clear
- Contract terms must accessible



PLAIN LANGUAGE FOR CONTRACT TERMS

- Use of words in plain, ordinary meaning
- Consistent use of terminology
- Avoidance of complex definitions or technical terms as far as reasonably possible.



FORMAT AND STRUCTURE OF CONTRACT

- For printed material, use of minimum font sizes, contrasting colours of background and text
- Clarity in organisation and layout of text
- Avoidance of long, complicated sentences
- Bringing important terms to the attention of the customer



ACCESSIBILITY OF CONTRACT TERMS

- Provision of contact numbers for customer assistance
- For information on a website, the website should be accessible in accordance with World Wide Web Consortium guidelines

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IMPLEMENTATION TIMEFRAME

- Contracts entered into on or after date of registration must be compliant six months from that date
- Contracts for fixed line services under SFOAs must comply on or before six months from that date
- For other contracts
 - Contracts compliant on or before that date
 - Issue a notice advising customers of availability of a compliant contract.

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CONSUMER CONTRACTS CODE

Compliance and Enforceability

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SIGNATORY PROCESS

- Code has been published
- CSPs may voluntarily become signatories
- Compliance Checklist
- Regulator criticisms of low sign-up rates
- ACIF encourages early adoption of Consumer Contracts Code



ACA REGISTRATION

- Code submitted to ACA for registration
- Six months after registration the ACA may enforce
- ACA direction to comply backed by penalties against any CSP
- Signatory status is irrelevant




TIO JURISDICTION

- Code confers jurisdiction on TIO
- TIO has consented to jurisdiction
- TIO rulings binding on all members
- Signatory status is irrelevant



COMPLIANCE

- ACIF's role in compliance
- Responsibility of each CSP
- Regulator and consumer scrutiny
- Critical date: 6 months post-registration



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REVIEW

- ACIF will review Code after 2 years



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REFRESHMENT BREAK




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CUSTOMER INFORMATION ON PRICES, TERMS AND CONDITIONS CODE

Key Provisions


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OVERVIEW


- Scope of the Code
- Rules on Advertising
- Rules on Information Provision
 - Before the customer enters the contract
 - At the point of sale and at any time in the life of the contract



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SCOPE OF THE CODE

- Applies to all
 - Carriers
 - Carriage Service Providers (including ISPs)
 - Content Service Providers
- Customers covered by the Code are
 - The person with whom the provider has the contract
 - An agent of the person
 - A person eligible under the provider's rules to enter into a contract



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ADVERTISING RULES

Applies to just about all media for advertising including

- Broadcast and subscription services, and cinema
- Any kind of press
- Printed material (brochures, direct mail, bill inserts, packaging, etc)
- Electronic communications including the internet, SMS, MMS, email



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ADVERTISING RULES

Basic rules

- Advertising material must be accurate and current
- Any conditions, limitations, qualifications or restrictions on an offer must be clearly stated



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ADVERTISING RULES

- Any material that uses the term 'free' or 'unlimited', or their equivalents must state the elements of the offer that are 'free' or 'unlimited' and any other elements that qualify the offer.
- Any material must state any conditions or limitations on the offer, including limits on geographic availability, availability of product, relevant timelines and any eligibility criteria.



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ADVERTISING RULES (continued)

- Special offers must include the elements offer, any conditions and limitations, and the relevant period of the offer
- Savings claims must state the service or rate or other matter on which the claim is made
- Any offer of bundled products must clearly state any conditions or costs which apply
- Comparative advertising must be clear as to what the product is being compared, and the comparison must be accurate, current and relevant.



INFORMATION PROVISION

Basic Rules

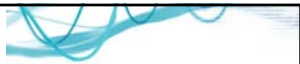
- All information provided must be accurate, current, relevant and provided in a timely manner
- Provided in plain language that accurately explains the prices, terms and conditions associated with the product and is accessible.



INFORMATION PROVISION - RULES

The rules cover information that must be provided


- Before the consumer enters into the contract
- At any time during the life of the contract
- Exceptions



INFORMATION PROVISION

Information that must be provided to customers before they enter into a contract

- Parties to the contract
- Sufficient description of the product, including whether it meets stated customer needs
- Geographic coverage, on request
- Minimum total charge or components
- Relevant details on bundled products
- Termination requirements and charges




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INFORMATION PROVISION

Provided at the point of sale and at any time in the life of the contract

- A copy of the contract, on request, at no charge
- Relevant fees and charges for the product
- How the contract may be amended, including notice period and how the customer will be notified




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INFORMATION PROVISION

Accessibility of Information

Requires reasonable endeavours to respond to requests for information that is appropriate to a customer's needs:

- Non English speaking person
- Person with a disability



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INFORMATION PROVISION

EXCEPTIONS:

- If the Customer does not want the information
- If it is reasonably impracticable to provide information at that time – but the information must be supplied later
- If it is not reasonable for the sales rep. to hold the information – reference to the Supplier
- Other instances where would not be reasonable.



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CUSTOMER INFORMATION ON PRICES, TERMS AND CONDITIONS CODE

Compliance and Enforceability


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OVERVIEW

- Previous signatories need to re-sign
- Compliance Checklist
- New Code submitted to ACA for registration to replace previous registered Code
- ACA enforcement powers
- TIO jurisdiction



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ACA MONITORING/ACTION IN 2004

- ACA review of advertising found 20% of print, 4% of broadcasting ads in breach of Code
- Incorrect use of disclaimers
- Failure to disclose limitations on availability of service
- Failure to substantiate savings claims



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ACA MONITORING/ACTION IN 2004

- Misleading use of the word “free”
- Failure to disclose charges clearly
- ACA required remedial action by CSPs to comply
- New PTC Code will be closely monitored by ACA
