

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ANNUAL REPORT 2021

ACCC01QW:

Please provide an update on the ACCC's work on small business unfair contract terms in relation to:

- issues identified
- enforcement action and outcomes
- targets.

Answer:

- and b.

The ACCC has taken a range of compliance and enforcement actions to help small businesses receive the protections under the unfair contract terms laws since they were extended to cover small business standard form contracts in November 2016. The actions taken by the ACCC from November 2016 to September 2020 are summarised in the Government's [Decision Regulation Impact Statement](#) (DRIS) regarding its proposed options for reforms to the unfair contract terms laws. See the summary at Appendix A, pages 80-89 of the DRIS. These summaries also describe the unfair contract terms identified in each matter. Appendix A also includes summaries of the outcomes of the ACCC's compliance and enforcement actions in relation to unfair contract terms in consumer standard form contracts.

Since September 2020 the ACCC has taken further compliance and enforcement actions in relation to unfair contract terms in standard form small business contracts. These are listed in the table below, along with a summary of the issues involved in each matter, and links to further information about the matters.

Matter	Date	Unfair Contract Term Issues	Enforcement Outcomes
Maxgaming Qld Pty Ltd (Maxgaming)	September 2022	<p>Maxgaming is the largest supplier of monitoring, gaming and maintenance services in Queensland, servicing hundreds of licensed gaming venues including small business sports clubs, pubs and other venues. The ACCC considered that the following terms used by Maxgaming in its contracts were likely to be unfair contract terms:</p> <ul style="list-style-type: none">- Rollover clause allowing for an automatic renewal of the contract unless the customer cancelled in writing within a specified time, without any countervailing obligation on Maxgaming to provide notice to the customer that the contract was about to expire and the automatic renewal would otherwise occur.	<p>Maxgaming acknowledged the terms were likely to be unfair and offered the ACCC a court enforceable undertaking committing to:</p> <ul style="list-style-type: none">- not rely on, and amend these terms in existing contracts- not include these terms, or terms of similar effect, in future contracts.

		<ul style="list-style-type: none"> - Unilateral price variation clause in favour of Maxgaming. - Exclusion of liability and/or indemnity clause in favour of Maxgaming, including for liability due to Maxgaming's negligence or wilful default, with no corresponding benefit to the customer. 	<p>See s87B Undertaking and ACCC Media Release</p>
<p>ACCC v Fujifilm Business Innovation Australia Pty Ltd (Fuji)</p>	<p>August 2022</p>	<p>Fuji supplies a range of business products on a lease basis. Fuji also services these products, and supplies software and print management services.</p> <p>The Federal Court declared 38 contract terms from 11 types of Fuji standard form small business contracts for printers and related software unfair. These included:</p> <ul style="list-style-type: none"> - Automatic renewal terms permitting Fuji to renew contracts for a further period unless customers cancelled the contract a certain number of days before the end of the contract term. - Disproportionate termination terms allowing Fuji to terminate contracts in a significantly wider range of circumstances than those allowing customers to terminate, if any. - Liability limitation terms which limited Fuji's liability or required the customer to indemnify Fuji without the customer having corresponding rights. - Termination payment terms which required customers to pay extensive exit fees to Fuji if the contract was terminated, including charges that Fuji could unilaterally set. - Unfair payment terms requiring customers to pay Fuji for licensed software under the contracts irrespective of whether Fuji delivered the software and to pay for goods prior to delivery. - Unilateral variation terms including charges, in favour of Fuji. 	<p>Following litigation initiated by the ACCC, the Federal Court by consent, found that a number of Fuji's small business contracts contained unfair contract terms.</p> <p>Fuji admitted that the contract terms were unfair and consented to the declarations and other orders made by the Court which included injunctions preventing Fuji from relying on and entering into any small business contracts containing the unfair terms and an order for Fuji to implement a compliance program.</p> <p>See also the ACCC Media Release</p>
<p>Chicken meat processors</p>	<p>May 2022</p>	<p>Following a direction from the Government to conduct an inquiry into markets for the supply of perishable agricultural goods and the extent to which bargaining power imbalances exist</p>	<p>Several chicken meat processors agreed to amend certain problematic contract terms from their</p>

		<p>in those markets, the ACCC's 2020 Perishable Agriculture Goods Inquiry final report noted that we had identified that potentially unfair contract terms were contained in standard form contracts between chicken meat processors and chicken growers, and would investigate further.</p> <p>As a result of that investigation, several chicken meat processors agreed to amend certain terms in their contracts with chicken growers. Examples of the concerning terms include:</p> <ul style="list-style-type: none"> - Unilateral contract variation clauses, including price variations in favour of the chicken meat processors. - Terms that allowed processors to require growers to make significant unplanned capital investments during the term of the contract. - Imbalanced termination clauses allowing a processor to terminate a grower's contract with a shorter notice period than if the grower sought to terminate. 	<p>contracts to address the concerns raised by the ACCC. See ACCC Media Release</p>
<p>Please Hold (UK) Limited (PHMG)</p>	<p>November 2021</p>	<p>PHMG is a UK based audio branding company that provides services including on-hold music and on-hold marketing services to small business customers.</p> <p>Following allegations that PHMG's standard form contract contained unfair contract terms, the ACCC launched an investigation. The ACCC considered that PHMG's contracts contained terms which were unfair, including:</p> <ul style="list-style-type: none"> - Rollover contract terms: Unless customers provided written cancellation 42 days before the end of the initial contract, the contract rolled over, without notice to the customer, for another full term of between 24 to 36 months. - Early termination clauses: customers who did not cancel their contracts in time and had their contracts extended faced early termination charges 	<p>While PHMG did not accept that its contract terms were unfair, it cooperated with the ACCC's investigation and agreed to amend its contract terms to address the concerns raised by the ACCC. See ACCC Media Release</p>

		equivalent to the payments for the full contract term less three per cent.	
Tyco Australia Group Pty Limited trading as ADT Security (ADT)	November 2020	<p>ADT provides security services to residential and commercial customers, including the installation and monitoring of security cameras, home security alarms and smoke alarms. The concerning terms in its contracts included:</p> <ul style="list-style-type: none"> - Unilateral variation clause permitting ADT to vary contracts during the initial term with one months' notice. - Fee increase clause permitting ADT to increase fees after the first 12 months of the initial three year term. 	<p>ADT admitted that these terms were unfair contract terms and offered the ACCC a court enforceable undertaking committing to remove or amend the offending terms.</p> <p>See s87B Undertaking and ACCC Media Release</p>

c.

The ACCC does not have set targets for small business unfair contract terms actions, however ensuring that small businesses receive the protections of the competition and consumer laws and industry codes of conduct is a 2022-23 priority area for the ACCC.

In line with our [Compliance and Enforcement Policy](#), we exercise our discretion and focus our resources on considering possible contraventions of the laws we administer involving circumstances that will, or have the potential to, impact vulnerable consumers, harm the competitive process or result in widespread consumer or small business detriment.

The ACCC will conduct education, or undertake compliance initiatives or enforcement action, when appropriate given the circumstances. In deciding which compliance or enforcement tool (or combination of such tools) to use, our first priority is to achieve the best possible outcome for the community and to manage risk proportionately. The ACCC considers enforcement responses that are proportionate to the conduct and the resulting or potential harm.

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ACCC02QW: In relation to Australian corporations that are members of various global organisations, which have stated objectives and goals, has the ACCC considered whether Australian corporations implementing these goals could lead to any breaches of Australian consumer law through cartel like behaviour that would result in:

- a. a reduction in consumer choice?
- b. higher or inflated prices?
- c. damage to the economy?

Answer:

The ACCC has not considered any complaints that Australian corporations that are members of global organisations, which have stated objectives and goals, have breached the CCA by implementing those goals in Australia.

In order to do so, we would need additional information about the conduct of concern and how it has been implemented in Australia.