

AUSTAR United Communications Limited

Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010

Submission to Senate Economics Committee Inquiry



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To: Department of the Senate
Senate Economics Committee
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1. Introduction

AUSTAR United Communications Limited (**AUSTAR**) welcomes the opportunity to respond to the Senate Economics Committee (**Committee**) Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (**Bill**) (**Inquiry**).

AUSTAR has previously made submissions to the Standing Committee of Officials of Consumer Affairs (**Standing Committee**) throughout the consultation period and is keenly following the development of consumer policy and regulation – due to our position as a major provider of subscription television and communications services to consumers throughout regional Australia.

In addition to the specific comments that we have set out in this submission, AUSTAR is also a member of the Australian Direct Marketing Association (**ADMA**) and supports ADMA's submission to the Committee on the Bill.

2. Background

2.1 *Who is AUSTAR?*

AUSTAR is one of Australia's leading subscription television providers, with more than 740,000 customers, or over 2.3 million regional Australians. AUSTAR supplies digital television services to customers in regional and rural Australia. AUSTAR also offers internet and mobile telephone services.

AUSTAR provides services to consumers in regional areas of NSW, Victoria, Queensland, and South Australia and to all areas of the Northern Territory and Tasmania (**AUSTAR Areas**). Our television, mobile and dial-up internet products are made available to consumers in all AUSTAR Areas; our broadband product is currently available in two regional markets.

2.2 *Unsolicited Selling and Door-to-door activities*

Unsolicited selling including door-to-door sales are particularly important for AUSTAR, and for regional consumers, given the nature of our product – a local face to face consultation allows a real time review of a customer's entertainment needs and handling of pre and post sale enquiries.

In light of our regional focus, unsolicited selling is even more important in our markets for a number of reasons:

- AUSTAR has no locally domiciled AUSTAR employees or retail premises to offer a face to face local consultation for consumers. We do have some mobile kiosks that attend different retail locations from time to time however this presence remains limited. Door-to-door sales, therefore, offer regional and rural Australians the ability to engage in relevant and interactive conversation about our product and services before making a purchase decision. With over 90 different channels, numerous packages and pricing dependent upon a consumers needs and the seasonal promotions we run, AUSTAR

believes that local trained representatives with appropriate collateral information (explaining our product, services and packaging) are crucial to assist consumers in making an informed purchasing decision.

- Many of the individuals that we employ to act as selling agents have been comprehensively trained and provided with new skills – skills and opportunities that are not readily available in many of the regional cities or towns they live in. In addition, many of these individuals were employed from a background of either long term unemployment or as unskilled. Given the extent of our door-to-door operations, any reduction of these activities may impact the economy in those areas.
- Notwithstanding the proposed national broadband network which is unlikely to be deployed swiftly in regional areas, AUSTAR does not believe that the current availability of fast broadband in rural and regional Australia due to the lack of ADSL2 coverage provides regional Australians with the same ability to research and purchase goods and services over the internet. Accordingly we do not believe that this is a complete substitute for the detailed product enquiry possible via door-to-door activity.

2.3 *General support of the Australian Consumer Law*

As a major provider of consumer services across nearly all states and territories in Australia, we are acutely aware of the challenges and barriers raised by the different regulatory regimes in each jurisdiction. We support the Council of Australian Governments (**COAG**)’s agreement to the consumer law reforms which will deliver a single national consumer law, the Australian Consumer Law (**ACL**) and we strongly support the objective of reducing regulatory complexity for business and the harmonization of consumer practices across all States.

Within the context of our overall support for the ACL, we have provided some comments on Schedule 1, Division 2 of the Bill – relating to unsolicited consumer agreements. We are concerned that some of the proposed provisions of the Bill are overly burdensome and may unnecessarily impinge upon AUSTAR’s (and industry) business practices, with little or no consumer benefit.

3. Permitted hours for negotiating an unsolicited consumer agreement

3.1 *Permitted calling hours*

Section 73 of the Bill prohibits calling on a person after 6pm on a weekday, 5pm on a Saturday and not at all on a Sunday or public holiday, unless consent exists.

Door-to-door and telemarketing sales are a critical part of AUSTAR’s residential sales channels as set out in section 2.2 above.

We believe that if section 73 is adopted in its current form, it would have a significant negative effect on the door-to-door sales channel and diminish value for regional consumers. Currently, all States (except Queensland) permit a dealer to call on a person until 8pm in the evening. We

strongly oppose the new ACL moving away from the current position. Without the opportunity to contact prospective customers after 6pm, many consumers would not have the opportunity of benefiting from face to face consultation when purchasing our product or services. Face to face consultation allows customers to engage in interactive discussions and be more fully informed about our product before making a purchase decision. Most importantly, there is a far greater likelihood of both or all family decision makers being present after 6pm, enabling a more informed enquiry and an appropriate choice for the whole family being made at the point of sale. As a family-centric service (as opposed to an individual service), we think the engagement of all members of the household is critical.

The number of regional and rural Australian residents employed by or through AUSTAR's (and other employers') door-to-door activities is significant, and this number would be reduced by the inability to operate outside of 6pm – which in turn will have a negative impact on the economy in these areas.

We note that paragraph 8.27 of the Explanatory Memorandum (**EM**) states that the requirements of Sub-Division B of Division 2 (Unsolicited Consumer Agreements) – which provides that permitted calling hours do not apply to telemarketing as telemarketing calls – continue to be regulated under the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Telecommunications Industry Standard)*. The Telecommunications Industry Standard permits calling until 8pm on a weekday. To ensure consistency in the application of the regulation of unsolicited consumer agreements, we would recommend that the permitted calling hours for door-to-door remain consistent with those for telemarketing.

For the reasons set out above, AUSTAR strongly recommends that the default calling hours in section 73 should revert to 8pm on weekdays, as currently permitted in most States.

3.2 Consent

AUSTAR also submits that section 73(2) of the Bill may operate in such a way that it will restrict door to door activities unnecessarily. Currently, AUSTAR door-to-door agents may call at a prospective customer's home, and during that visit, the customer may request the agent to return at a later time, which may be outside the permitted calling hours. As currently drafted, section 73(2)(b) would prevent consent being given by the consumer in the presence of the dealer.

AUSTAR believes that provided a prospective customer's consent is provided freely and without undue coercion, a person should be free to make an arrangement to be visited outside permitted negotiating hours if this is agreeable to them, even if such consent is given during a door-to-door visit.

Therefore, we submit that this section should be deleted, so that a customer has the right to provide consent face to face.

4. Prohibition on supplies etc for 10 business days

Section 86 of the Bill, specifies that a supplier may not, under an unsolicited consumer agreement, supply goods or services, accept any payment or consideration, or require any payment during the 10 business days from when the agreement was made. As a matter of consumer policy, AUSTAR believes that the Bill should provide consumers with an ability to make an informed choice whether or not they wish to be provided with services during the cooling off period. This is particularly so for services that are provided to a consumer on a continuing basis, such as the provision of subscription television. AUSTAR does not believe that it is the place of legislation to inhibit a consumer's ability to make an informed decision to accept services immediately after a sale is made where appropriate safeguards are in place to protect the consumer in the event of termination under a cooling-off right.

As previously submitted to the Standing Committee, we believe there are very real circumstances in which a consumer will want to accept service during the cooling off period. For example, if a customer signs up to an AUSTAR subscription because they are an avid sports fan and want to be able to watch a particularly rugby game that week, that customer should be able to make an informed choice to request that services be provided before the end of the cooling off period.

Further, the provision of services during the cooling off provides consumers with the ability to properly assess the services – where services such as ours are prohibited from being supplied during the cooling off period, a consumer has no opportunity to try or test the services before making an informed decision.

AUSTAR would recommend that the ACL adopt the position under NSW and Victoria which does not prohibit the supply of services during the cooling off. Failing this, AUSTAR strongly suggests that there be a specific exemption to the general prohibition on supply for services such as ours, which are provided on a continuing or subscription basis. Such services should, by their very nature, be permitted to be supplied during the 10 day cooling off period. In the event that this exemption is made, a similar exemption to that provided for in section 8(2) of the Victorian Fair Trading Regulations (and extended to all unsolicited consumer agreements not just telemarketing agreements) as applying to the prohibition on charging in section 80 of the Victorian Fair Trading Act 1999 should also be included.

5. Termination period and notice

5.1 Termination period

AUSTAR believes that the termination period set out in section 82 of the Bill of 10 business days is too long and it is likely to be difficult to calculate accurately for each customer. Further, in the event that the Committee does not adopt our recommendations as set out in section 5 above, we believe that the prohibition on providing goods or services for 10 business days would in fact be obstructive and detrimental to consumers.

10 business days is longer than any of the cooling off periods that currently exist under the State legislation and may in some circumstances (where there are a number of weekends, public

holidays or other non-working days falling after the date the unsolicited consumer agreement was made) be unnecessarily prolonged – to both the supplier and consumer’s detriment.

In addition, we are concerned about the complexity of operating a system that can count ‘business’ days and recognise different State-based public holidays, for example. There is a risk that if a more complex system is required to calculate this period, it could increase non-compliance.

We believe that a period of 10 days is sufficient for a consumer to consider an agreement and exercise any rights to terminate it.

5.2 Termination notice

Section 82(1) of the Bill provides that a consumer may terminate an unsolicited consumer agreement by indicating in an ‘oral or written notice to the supplier’.

AUSTAR is concerned that providing customers with a right to terminate orally may be difficult from a systems perspective to implement by business. For example, AUSTAR operates a call centre of around 700 employees – if a customer wishing to terminate an unsolicited consumer agreement calls our general 1300 number, he or she will enter into an interactive voice recording system, with a number of options. This means that the customer could be directed in a number of different ways if they do not identify the reason for their call – which may mean that if they are directed to the wrong type of call centre employee, their oral termination may be difficult to track or monitor.

It may also be difficult, even if a customer reaches an appropriate customer service employee, to properly identify the unsolicited consumer agreement that the customer wishes to terminate if the customer does not provide sufficient information about the agreement. We would recommend that if the legislation contains a right to terminate an agreement orally, a consumer must have to identify the same matters as they would if they terminated by a written notice.

In addition, we would request that suppliers are allowed to include one specific phone number or contact (similar to an address in a written termination notice) by which a consumer can terminate their agreement orally – so that we could appropriately field these calls.

5.3 Delivery of agreement document and termination notice

We also have some concerns in relation to section 78(2) of the Bill. This section requires a supplier to provide a customer with a copy of the agreement document within 5 business days after the agreement was made over the phone.

AUSTAR is concerned that given our customers reside in regional and rural areas of Australia, the time-frame of 5 days may be difficult to meet in all circumstances – it may take up to 2 days to generate the customer agreement and related materials to send to customers. AUSTAR recommends that this section be amended so that there is only a requirement that the supplier must dispatch / send a copy of the document to a consumer within 3 days of the agreement being negotiated and that there be no time-frame within which the document must reach the customer, which is in most cases outside the control of the supplier.

We do not believe that this will produce any consumer detriment, as the termination period in section 82 commences from the time at which the consumer *receives* the agreement document and not from the time of negotiation. This necessarily means that the cooling off period will be longer if the agreement document is sent out later – and therefore, business bears the risk in these circumstances.

6. Other comments

6.1 Requirements for agreement document

Section 79(b) and (c) of the Bill sets out the requirements in relation to the type of information that must be provided to consumers with the agreement document. AUSTAR believes that the legislation and any proposed regulations should not prescribe the actual form. We are comfortable for the legislation to provide guidelines on the information that must be contained in these documents and font size, however we do not believe that the legislation should impinge upon the way that we format this communication or display it to the customer.

6.2 Possible inconsistency between section 85 and 88

Section 85(6) of the Bill provides that where an agreement is terminated in accordance with section 82 after the end of the period of 10 business days starting, and prior to the termination, but after the end of that period (being the 10 business days) then the termination does not affect the liability of the consumer under the agreement to provide consideration for the service.

AUSTAR understands that this section means that where a consumer terminates under section 82(3)(c) or (d) – which provides for 3 and 6 month termination periods – then where a service is provided during those months – the customer must pay for it (i.e. they remain ‘liable’). In addition, the EM supports this and states (at page 226 para 8.66) that this is to *‘minimise the potential for consumers to game the unsolicited selling provisions and ensure that consumers pay for the goods and services that he she use prior to terminating the agreement’*.

Whereas, sections 88 (1) and (2) of the Bill provide that where an agreement is terminated in accordance with section 82, a person must not bring or assert an intention to bring legal proceedings against the consumer or take any other action against the consumer nor, for the purpose of recovering an amount alleged to be payable, place the consumer’s name on a list of debtors.

On AUSTAR’s reading of section 88, it appears that even if a consumer is liable to pay for any service supplied under section 85(6) (and the EM) a supplier cannot actually enforce the payment under section 88.

Accordingly, we are concerned that there is some inherent inconsistency between these sections and the EM, and we would appreciate clarification of this issue in a future draft of the Bill and EM.

9. Conclusion

AUSTAR appreciates the opportunity to contribute to the Senate committee's debate on the ACL.

If you require any further information, please do not hesitate to contact myself or Alison Shilkin of this office on 02 9295 0126.

Yours sincerely,

 (...)

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